Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.,
Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,
Appellants-Intervenors,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,
Appellees.

BRIEF FOR APPELLANTS AND APPELLANTS-INTERVENORS ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

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Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.,

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Appellants-Intervenors,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Appellees.

BRIEF FOR APPELLANTS AND APPELLANTS-INTERVENORS ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

Opinions Below

The opinions of the three-judge District Court are reported at 227 F. Supp. 556, 569 (E. D. La., 1964). The opinion of the majority of the Court, District Judges West and Ellis is set forth in the Record at page 63. The dissenting opinion of Circuit Judge Wisdom is set forth in the Record at page 84.

Jurisdiction

The judgment and orders of the District Court were entered on January 10, 1964 (R. 62) and on February 13, 1964 (R. 63). A Notice of Appeal was duly filed on Janu-

ary 31, 1964 (R. 110), and an amended Notice of Appeal was filed on February 25, 1964 (R. 113), subsequent to the February 13th order of the majority of the Court modifying its order of January 10th. The Jurisdictional Statement was filed on March 23, 1964, and probable jurisdiction was noted on June 15, 1964. Jurisdiction of this appeal is conferred on this Court by Title 28 of the United States Code, Section 1253.

Statutes Involved

The statutes involved are Louisiana Revised Statutes Title 14, Sections 358 through 374, the Louisiana "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Sections 390 through 390.8, the Louisiana "Communist Propaganda Control Law". The texts of these statutory provisions are set forth in full in Appendix A.

Questions Presented

1. Whether Louisiana Revised Statute Title 14, §§ 358-374, the "Louisiana Subversive Activities and Communist Control Law" and Louisiana Revised Statute Title 14, §§ 390 through 390.8, the "Louisiana Communist Propaganda Control Law" on their face violate the First, Fifth and Fourteenth Amendments to the Constitution of the United States?

2. Whether these state statutes have been superseded by federal legislation?

3. Whether these state statutes as applied to the appellants violate the First, Fifth and Fourteenth Amendments to the Constitution of the United States?

4. Whether the Federal District Court improperly declined to adjudicate the issue of the constitutionality of the Louisiana statutes?

5. Whether the Federal District Court had the power and duty to enjoin the enforcement of the Louisiana statutes?

6. Whether the District Court's refusal to permit appellants to adduce evidence as to the constitutionality of the statute as applied violated due process of law?

Statement of the Case

1. Proceedings Below

This is an appeal from an opinion and order of a three-judge Federal District Court convened pursuant to Title 28 U. S. C. Sections 2281 and 2284. The appellants instituted a plenary federal action on November 12, 1963, seeking a declaratory judgment and an interlocutory and permanent injunction restraining the enforcement of the "Subversive Activities and Communist Control Law" and "Communist Propaganda Control Law" of Louisiana, Revised Louisiana Statutes 14:390 through 14:390.5 and 14:358 through 14:388, R. 6.[1] The complaint also asked for

[1] The operation of the statutory scheme is discussed in full in Points I and II of the argument. In short the statute sets up certain operative definitions including "subversive organizations", "foreign subversive organizations", "subversive persons", "communists", "communist party", "communist front organization". Any person falling into these categories remaining in Louisiana after five days are required to register with the State. Failure to register is punishable by penalties up to ten years imprisonment and a fine of $10,000. Other felonies punishable by the same penalties are created including assisting in the formation or participating in the management or contributing to the support of any subversive or foreign subversive organization and becoming or remaining a member of such an organization. Other penalties are set forth including dissolution of subversive organizations and discharge from public employment of subversive persons. The "propaganda control" sections provide for up to ten years imprisonment and $10,000 fine for "delivering, distributing, disseminating or storing" in Louisiana what is defined as "communist propaganda".

relief pursuant to Title 42, U. S. C. 1983 and 1985 to protect federally protected constitutional rights.

A three-judge district court was duly convened by the Chief Judge of the Court of Appeals for the Fifth Circuit, R. 8. A temporary restraining order restraining the defendants from proceeding with the criminal enforcement of the state statutes against the appellants was entered by Circuit Judge Wisdom on November 18, 1963, R. 9, 11, and was continued by the Court pending the hearings on appellants' motion for interlocutory relief.

On December 9, 1963, the three-judge Court convened and heard argument on the constitutionality of the state statutes on their face. The Court shortly thereafter ordered a hearing on the question as to whether evidence was admissible as to the constitutionality of the state statutes as applied. This hearing was held on January 10, 1964. At the conclusion of this hearing, the majority of the three-judge court announced in an oral ruling from the bench that (1) the statutes were constitutional on their face, and (2) the complaint failed to state a claim upon which relief could be granted. Accordingly, the majority of the Court set aside and vacated the temporary restraining order previously issued, denied the motion for interlocutory relief, dismissed the complaint and denied a motion for a stay pending appeal to this Court. Circuit Judge Wisdom dissented from each of these rulings, R. 62.

On February 13, 1964, the majority of the Court filed a written opinion and order which modified and vacated certain of its conclusions of January 10th, R. 63, 72. In this opinion the majority of the Court vacated by its own motion its finding of January 10th that the state statutes were constitutional on their face and declined to adjudicate the question of constitutionality, R. 72. The majority of the Court, however, reaffirmed its prior decision denying the application for injunctive relief and dismissing the suit for failure to state a claim upon which relief could be

granted, R. 75. Circuit Judge Wisdom filed separately his opinion dissenting from the rulings of the majority of the Court, R. 84. He would find that:

(1) the state statutes here involved are unconstitutional on their face in violation of the First and Fourteenth Amendments to the Constitution of the United States;

(2) the state statutes here involved are superseded by existing federal legislation and their enforcement is accordingly suspended;

(3) the complaint stated a cause of action for relief and may not be dismissed;

(4) the refusal to permit the appellants to adduce evidence as to the constitutionality of the statute as applied violated their rights to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. The majority refused to issue a stay pending the appeal to this Court, Judge Wisdom dissenting (R. 63).

The appellants have appealed to this Court from each and every ruling of the majority of the three-judge District Court. Probable jurisdiction was noted on June 15, 1964.

2. Statement of the Facts

There is no dispute as to the material facts of this case. Both the majority of the three-judge court and Circuit Judge Wisdom dissenting, accepts as true for the purposes of this appeal all of the allegations in the complaint (R. 65).

The facts material to the consideration of the questions presented are set forth in both the majority and dissenting opinions. They are as follows:

The appellant Southern Conference Educational Fund, Inc. (hereinafter referred to as "SCEF"), is an association whose guiding principle for many years has been to seek to improve economic, social and cultural standards

in the South in accordance with the highest American institutions and ideals. Its principal purposes have been (1) to promote civil rights for Negro citizens by eliminating segregation and all forms of discrimination based on race, and (2) to bridge the existing gulf between them and the white citizens of their local communities (R. 5, 56). In seeking to attain these objectives, it has utilized all available lawful and non-violent means of communication and education including public speaking, correspondence and the publication and distribution of pamphlets, books and a newspaper (R. 5, 56).

Appellant James A. Dombrowski is SCEF's Executive Director and possesses a Doctor of Philosophy degree from Union Theological Seminary (R. 55).

The two appellant-intervenors, Benjamin E. Smith and Bruce Waltzer, are practicing lawyers in New Orleans, Louisiana (R. 18). Smith is SCEF's Treasurer (R. 19), while Waltzer, his law partner, has no connection with it other than professional representation (R. 19, 52). They have been extremely active in civil rights cases in both Louisiana and Mississippi (R. 51). In addition to their substantial private practice, they have represented Negro citizens who are seeking to obtain the rights guaranteed to them by the Constitution of the United States. As two of the handful of Southern white lawyers involved in desegregation litigation, they are presently counsel of record for hundreds of such Negro citizens in these two states. In addition, they have represented the American Civil Liberties Union in the State of Louisiana in a substantial number of cases (R. 50).

On October 4, 1963, during the holding of the first interracial lawyers' conference in the recent history of the City of New Orleans, Smith, Waltzer and Dombrowski were arrested by police officials on warrants charging violation of the Louisiana anti-subversion laws (R. 50-51). Their offices were raided and files and records, including legal files,

seized (R. 18). The circumstances of the arrests are concisely set forth in Judge Wisdom's opinion (R. 92):

> "At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from 'racial agitation'. An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests."

The discharge of the appellants referred to by Circuit Judge Wisdom occurred in Section "E" of the Criminal Court for the Parish of Orleans on October 25, 1963. After hearing evidence, Judge J. Bernard Cocke, a veteran member of that bench, summarily vacated the warrants of arrest, holding that "there are no facts whatsoever to justify this Court binding these three defendants over for trial in the established manner of law."[2] Accordingly, he ordered the discharge of Smith, Waltzer and Dombrowski.

Despite this ruling, however, Representative Pfister and the Louisiana Joint Legislative Committee on Un-

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[2] Subsequently, a motion to suppress the seized evidence was granted on the ground that the October 4th raid was illegal. See No. 183459, Criminal District Court for the Parish of Orleans. Section "B", June 12, 1964.

American Activities nevertheless publicly demanded the immediate criminal enforcement of the so-called state anti-subversion laws against appellants. The Joint Committee has been established by the Louisiana Legislature for the purpose of supervising the enforcement of the state statutes in issue here. See Point I, *infra*.

The appellants then turned to the Federal courts for protection against this serious and imminent threat to their fundamental constitutional rights. They sought a declaratory judgment and permanent and interlocutory injunctive relief restraining the enforcement of these state statutes as unconstitutional on their face and as applied, and as superseded by existing federal legislation. In addition, they sought permanent and interlocutory relief under Title 42 U. S. C. 1983 and 1985 against a conspiracy under color of state law to deprive them of rights, privileges and immunities guaranteed to them under the Constitution and laws of the United States.[3]

Immediately after the filing and serving of this complaint and the convening of a three-judge District Court pursuant to Title 28 U. S. C. 2281, a grand jury was summoned in the Parish of New Orleans to consider returning indictments against the individual appellants in response to the insistent demands by Representative Pfister for enforcement of the so-called anti-subversion laws. Circuit Court Judge Wisdom thereupon issued a temporary restraining order restraining any prosecutive action against the appellants pending the hearing and determination of the cause by the three-judge court. This restraining order was in effect until its dissolution by the majority of the court on January 10, 1964, Judge Wisdom dissenting (R. 63).

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[3] In addition to this litigation, appellants also brought suits for damages under the Civil Rights Acts in the United District Courts for the Eastern District of Louisiana, *Dombrowski* v. *Burbank*, Civil Action No. 13967, and the District of Columbia, *Dombrowski* v. *Burbank*, Civil Action No. 2678-63. Both actions are presently pending.

The complaint charged (R. 5) and the appellants sought to prove by affidavits and in a written offer of proof [4] that the threatened enforcement of these state laws is in every respect an attempt to enforce Louisiana's policy of racial segregation (R. 23-29). The appellants asserted and offered

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[4] In addition to attached affidavits and allegations as to the character of appellants, the nature of their civil rights activities and their freedom from communism, communist control and subversion, the offer of proof sets forth the following facts:

(a) that the raids of October 5, 1963 took place pursuant to search and seizure warrants signed on October 2, 1963.

(b) that said search and seizure warrants were based on wilfully inaccurate affidavits and that both the warrants and the affidavits are invalid on their face.

(c) that by virtue of these warrants great quantities of materials bearing absolutely no relationship to the warrants or to any legitimate investigative purposes were seized for the sole and exclusive purpose of destroying the effectiveness of appellants' civil rights activities.

(d) that none of the seized materials reveal any criminal activities whatsoever on the part of appellants but indicate only the legitimate nature of their civil rights activities.

(e) that following the vacation of the aforesaid warrants of arrest by the Criminal District Court for the Parish of Orleans, appellees publicly proclaimed that they were going to obtain indictments for violation of the statutes involved herein.

(f) that the purpose of the threatened indictments was to curtail appellants' civil rights activities as well as those of organizations with which they might be affiliated.

(g) that the law practice of Smith and Waltzer, including their ability to handle civil cases, has been adversely affected by the aforesaid charges and indictments.

(h) that pursuant to R. S. 14:358 and 14:390 practically all civil rights organizations would fall within their purview. Furthermore, it is impossible for any person or organization to comply with the statutes, and particularly with the registration requirements thereof. Moreoever, the presumption set forth in R. S. 14:359(3) is unreasonable.

(i) that the statutes were enacted solely and exclusively for the purpose of being applied to individuals and organizations active in the civil rights field.

to prove that the arrests, the raids, the seizure of books, files, membership lists and the threatened imprisonment of the appellants was a conscious effort to frighten, intimidate and deter the appellants and thousands upon thousands of Negro citizens of Louisiana and those white citizens courageous enough to support them from challenging the denial by the State of equality under the law to its Negro citizens (R. 23-29).

Circuit Judge Wisdom summarized sharply the factual thrust of the complaint:

> "The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plaintiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional".

And in the same context Judge Wisdom characterized appellants' offer of proof to support the complaint:

> "As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify".

The majority of the Court refused to hear any evidence, declined to act on the constitutional issues pre-

sented under the assumption that the complaint failed to state a cause of action for relief, and totally abdicated any federal responsibility resting upon what Circuit Judge Wisdom characterizes as "a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights" (R. 85).

Following the vacating of the restraining order prohibiting prosecutive action Dr. Dombrowski was indicted for violation of Rev. Stat. Title 14, Section 360, for failing to register with state authorities as a member of the Southern Conference Educational Fund, charged with being a "communist-front" organization in that it was "essentially the same as the Southern Conference for Human Welfare" cited by the House Committee on Un-American Activities in 1944 and 1947 as a communist front organization. This count carries a penalty of 10 years imprisonment and $10,000 fine. A second count charged Dr. Dombrowski with participating in the management of a "subversive organization" in that he was Executive Director of the Southern Conference Educational Fund. This count carries an identical penalty.

Benjamin Smith was indicted on three counts for being a member of Southern Conference, its Treasurer, and for being a member of the National Lawyers Guild. Bruce Waltzer was indicted solely for being a member of the National Lawyers Guild. The indictments are set forth in full in Appendix B.

As has already been indicated, the evidence seized during the raid of October 5, 1963 was ordered suppressed by Judge Platt. The state has appealed from this ruling. At this time the indictments against appellants are still pending.

Summary of Argument

This appeal involves the constitutionality of the Louisiana "Communist Control and Subversive Activities Law" and the "Communist Propaganda Control Act". The appeal raises the issue of the constitutionality of the state legislation on its face, its enforceability under the doctrine of federal supersedure, and the power and the duty of the federal district court to adjudicate the questions and restrain the enforcement of the state legislation.

I

The Louisiana legislation on its face violates the First and Fourteenth Amendments to the Constitution of the United States. The opinion of this Court last June in *Baggett* v. *Bullitt* is wholly dispositive. The Louisiana statute is identical in its operative provisions with the Washington statute struck down in *Baggett*. The Louisiana additions to the Washington statute merely accentuate its constitutional invalidity.

II

1. The Louisiana legislation is so broad in its sweep, so vague and indefinite in its definitions and characterizations of prohibited activity as to fail to meet the most minimal standards of the First and Fourteenth Amendments. The statute patently violates every guiding principle enunciated by this Court over the years to protect the fundamental freedoms embraced in the First and Fourteenth Amendments.

2. The extreme vagueness and overbreadth of the key operative definitions of the statute such as "subversive organization", "subversive person", "communist", "communist party", "communist front organizations", "communist conspiracy" and "communist propaganda" lends itself to selective enforcement against locally unpopular

causes. Its origin and the setting in which it operates reveals that the Louisiana statute is designed and utilized as an instrument in that State's many-faceted efforts to maintain segregation as Louisiana's way of life and to repress the efforts of Negro and white citizens to achieve the equal rights guaranteed by the Constitution and the laws of the United States.

3. The registration provisions of the statute and the criminal sanctions which enforce them, violate on their face the First, Fifth and Fourteenth Amendments. The definitions of "subversive organization" and "communist-front organization" upon which the requirement of registration mainly rests are unduly vague and indefinite constituting a dragnet sweeping into the orbit of the statute all organizations and persons seeking equal civil rights for Negro citizens in Louisiana. The statutory presumption of the proscribed status of such an organization based upon designations by Congressional Committees or other Federal agencies itself violates the Due Process Clause. Criminal sanctions may not rest upon non-judicial, *ex parte* Congressional designations. The method of identification further violates the Due Process Clause by creating an unconstitutional presumption of guilt.

The registration provisions violate the First and Fourteenth Amendments by inhibiting the exercise of individual freedoms affirmatively protected by the Constitution. The registration provision sweeps within its prohibition both knowing and unknowing members of proscribed organizations, and renders irrelevant the member's degree of activity in the organization and his commitment to its purpose.

The registration provisions further violate the Fourteenth Amendment by interfering with and impeding the fundamental right of citizens to travel freely within the borders of the United States from state to state without

restriction and limitation. The registration provisions further violate the constitutional privilege against self-incrimination safeguarded against state action by the Fourteenth Amendment. These provisions are a naked effort to force citizens to incriminate themselves under both state and federal laws.

4. The Louisiana statute violates the guiding principle of the First Amendment that even though government design be legitimate and substantial its purpose may not be pursued by means which broadly stifle fundamental liberties. The Louisiana legislation is not drawn narrowly to meet a legitimate government purpose. Both the context within which the statute was enacted and its threatened enforcement against the appellants underscores the intention of the state to utilize the unlimited and indiscriminate sweep of the statute to invade the area of constitutionally protected freedoms.

5. The enactment and attempted enforcement of the statute is another in many recent efforts to use the legislative power of certain Southern states to hamper, restrict or outlaw associations of Negro and white citizens who join together to seek implementation and enforcement of the Equal Protection Clause and the Fifteenth Amendment. The present statute in its entirety is a naked attempt to restrict and inhibit the fundamental constitutional right of freedom of association, through its incredibly broad dragnet provisions, its built-in presumption of guilt and its sweeping proscriptions against membership in organizations and the possession of books and literature. It is in its total effect a gigantic prior restraint upon the exercise of all First Amendment liberties.

III

The Louisiana legislation has been superseded by federal legislation. Among the federal statutes superseding the state enactments are the Smith Act of 1940, the Internal

Security Act of 1950 and the Communist Control Act of 1954.

Under the decision of this Court in *Commonwealth of Pennsylvania* v. *Nelson*, 350 U. S. 497, the Louisiana statutes have been superseded and may not be enforced. The considerations which led to the *Nelson* conclusion remain valid today. The scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplant it. The statutes involved touch a field in which federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. And the enforcement of the state laws present a serious danger of conflict with the federal program and national policy.

The decision of the Court in *Uphaus* v. *Wyman*, 360 U. S. 77 has not overruled *Nelson*. Under the *Uphaus* test the Louisiana statutes are superseded in that they proscribe the same "conduct" as Congress did in the federal legislation. The rule of *Nelson* continues to govern attempts by the states to intrude into areas of legislation preempted by the national government.

IV

1. The majority of the district court refused to adjudicate the issues except as to preemption and dismissed the complaint. The rationale for this action is not clear but seems to rest upon what Circuit Judge Wisdom characterizes in his dissenting opinion as "a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on State's Rights". But the power of a federal district court to enjoin the enforcement of unconstitutional state laws is not open to question. The assertion of a State's "right to self-preservation" does not in and of itself negate the existence of federal judicial power to restrain the enforcement of state laws which violate the Federal Constitution.

2. The district court had equitable power to restrain the enforcement of the criminal provisions of the state statute. This Court has consistently reaffirmed the principle that federal equity power exists to restrain state criminal statutes or proceeedings which threaten immediate and irreparable injury to fundamental constitutional rights. The Fourth and Fifth Circuits have recently restated forcefully the necessity for the use of federal equity power where state criminal statutes or proceedings interfere with or impede the exercise of fundamental federal constitutional rights. The enjoining of the enforcement of an unconstitutionally vague statute which inhibits the present exercise of basic constitutional liberties is a classic exercise of equitable power to prevent immediate and irreparable injury.

3. Title 28 U. S. C. 2283 is no bar to the enforcement of the Louisiana statute. The federal plenary action attacking the constitutionality of the statute was brought prior to the institution of any state court proceedings. It is settled law that Section 2283 does not bar injunctive relief where the federal action is brought prior to the state proceedings.

4. The decision of this Court in *Baggett* v. *Bullitt, supra,* disposes of any contention that the district court properly abstained from adjudicating these questions and enjoining the enforcement of the Louisiana statute. As in *Baggett* the special circumstances justifying an application of the doctrine of abstention are not present here. Under the decision in *Baggett* where an unconstitutionally vague state statute inhibits the exercise of First Amendment freedoms and deters constitutionally protected conduct a federal district court may not abstain from adjudication and relief. The recognition of the primacy of the federal judiciary in deciding questions of federal law requires this conclusion. The issues presented to the district court were fundamental questions of federal law falling within the special competence of the federal court system. The basic

principles of comity underlying the doctrine of abstention require that the Federal system recognizes its "primacy" and its "competence" and accepts its "duty" to adjudicate. This is required if American Federalism is to work.

V

The refusal of the majority below to permit any evidence to be adduced as to the constitutionality of the statute as applied violated due process of law. Evidence tending to show that a state statute is unconstitutional as applied is clearly admissible. The denial of the right to adduce such evidence out of a fear of the "publicity attendant" violated the most elementary principles of due process of law.

POINT I

The Louisiana statute violates on its face the First and Fourteenth Amendments to the Constitution of the United States.

1. The Opinion of the Court in *Baggett* v. *Bullitt* is Dispositive.

The opinion of this Court last June in *Baggett* v. *Bullitt*, 377 U. S. 360, handed down after the filing of the jurisdictional statement in the present appeal, is wholly dispositive of the questions here presented. This decision striking down the provisions of the Washington statute before the court in *Baggett* settles definitively the issue of the constitutionality on its face of the Louisiana statute here challenged.[5]

The statutory scheme of the Louisiana legislation is identical in all essential aspects to the Washington legis-

[5] The opinion in *Baggett* is also dispositive of the jurisdictional questions raised below by the majority of the three-judge court. See Point III, *infra*.

lation struck down in *Baggett*. The decisive operative definitions of "subversive organization," "foreign subversive organizations" and "subversive person" in the Washington legislation which render the statute void on its face as "unduly vague, uncertain and broad," *Baggett*, 366, are *in haec verba* the decisive operative definitions in the Louisiana legislation.

The Washington and Louisiana statutes were obviously the product of the same draftsmen. The only substantial variations in the Louisiana statute from the Washington statute already invalidated by the Court last term compound in an aggravated fashion the constitutional infirmities.

The Washington statute defines a "subversive person" as one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter, or to assist the overthrow or alteration of the constitutional form of government by revolution, force or violence. A "subversive organization" is defined as one which engages in or assists activities intended to accomplish such ends, or has as a purpose the commission of such acts. The statute then "presumes," that the Communist Party does and will engage in such activities. *Baggett* at p. 367. The combination of these "sweeping statutory definitions" sets up broad dragnets which "abut upon sensitive areas of basic First Amendment freedoms. *Baggett* at p. 372.

The Louisiana statute establishes the identical scheme and must be stricken down for the same reasons. The Louisiana embroidery upon the invalid Washington statute merely accentuates the vagueness of the statute presently before the Court. The Louisiana legislature has added to the invalid Washington provisions additional definitions and penal provisions far more sweeping than those the Court has already voided in *Baggett*. We discuss later

the independent invalidity of these provisions.[6] It is sufficient, however, at this point to indicate that Louisiana's additions to the Washington statute—the limitless presumptions and broadly ranging categories of the so-called "Communist-front" definitions and the extraordinary language in the "Communist propaganda" provisions—were hardly designed to limit or circumscribe the provisions set up by the statutory scheme which this Court has only this June rejected in *Baggett*. The Louisiana statute, identical in its basic definitions and structure to the Washington statute, has already been condemned by this Court in *Baggett*. The additional dragnet devices merely confirms the constitutional necessity for the prior condemnation.

2. The entire Louisiana statutory scheme is unconstitutionally vague, uncertain and broad.

The Washington and Louisiana statutes are so broad in their sweep, so vague and indefinite in their definitions and characterizations of prohibited activity that they fail to meet the most minimal standards of the First and Fourteenth Amendments. *Baggett* v. *Bullitt, supra; Aptheker* v. *Secretary of State*, 375 U. S. 928, 84 S. Ct. 1649; *Bouie* v. *City of Columbia*, 378 U. S. 347, 84 S. Ct. 1697; *Wright* v. *Georgia*, 373 U. S. 284; *NAACP* v. *Button*, 371 U. S. 415; *Smith* v. *California*, 361 U. S. 147, 151; *Winters* v. *New York*, 333 U. S. 507, 509-510, 517-518; *Herndon* v. *Lowry*, 301 U. S. 242; *Stromberg* v. *California*, 283 U. S. 359; *United States* v. *CIO*, 335 U. S. 106, 142. The unlimited commands of the statutes conflict sharply with the fundamental guarantees of free speech, assembly, association and the right to petition for redress of grievances. *Baggett* v. *Bullitt, supra; Gibson* v. *Florida Committee*, 372 U. S. 539; *Cramp* v. *Board of Public Instruction*, 368 U. S. 278. And as this Court restated in *Baggett* its holding in *Cramp*,

[6] See Point 2(a)(b), *infra*.

these statutes fall "within the compass of those decisions of the Court holding that a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. *Connally* v. *General Construction Co.*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495; *United States* v. *Cardiff*, 344 U. S. 174; *Champlin Refining Co.* v. *Corporation Comm'n of Oklahoma*, 268 U. S. 210." *Baggett*, at p. 367. *Bouie* v. *City of Columbia*, 378 U. S. 347, 84 S. Ct. 1697.

The most cursory examination of the Louisiana statute reveals a vagueness and over-breadth trenching upon First Amendment liberties more sweeping than any state statutory regulations in this delicate area previously considered by this Court. The statutory definitions and penal proscriptions patently violate every guiding principle this Court has developed over the years to protect the freedoms embraced in the First and Fourteenth Amendments.

We have already called to the Court's attention the identity in language between the Washington and Louisiana provisions defining "subversive organizations," "foreign subversive organization" and "subversive person." Under the Court's decision in *Baggett* these provisions, essential to the operation of the entire statutory scheme, must fall as "unduly vague, uncertain and broad." *Baggett*, at p. 366. The other Louisiana provisions which supplement the Washington statutory complex are equally unconstitutionally vague.

(a) The definition of "Communist" and "Communist Party" in Section 359(1) and (2).

A striking example of the over-breadth of language which turns this statute into "a dragnet which may enmesh anyone," see *Herndon* v. *Lowry, supra,* is the critical definition of a "communist" or a member of the "Communist

Party." According to the terms of the statutes the "Communist Party" includes within its orbit "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy." Section 359(2). A "communist" is accordingly any person who is a member of such an organization, or who is "proven to be substantially under the discipline and control of the International Communist Conspiracy." Section 359(1). All of the serious criminal and civil sanctions imposed by the statute rest upon this basic definition. See Sections 360, 361, 362, 364, 365, 366, 367, 369. By definition anyone who is a "communist" is also obviously a "subversive person" and a member of a "subversive," if not a "foreign subversive" organization.[7] These definitions of "communist" and "Communist Party" are clearly decisive to the entire operation of the statute. But the words here used are simply not "susceptible of objective measurement." *Cramp* v. *Board of Public Instruction, supra,* at p. 286. As this Court pointed out in *Cramp,* these words permit an "extraordinary sweep." Any organization or group of people, formal or informal, which engages in any activity in the State of Louisiana which may be construed by prosecution officials to parallel or coincide with "in any manner" any of the objectives, immediate or long-range, of what is characterized without any further definition anywhere in the statute as the "Communist Conspiracy" may fall within the proscribed area.

This is no academic or remote possibility. As Judge Wisdom points out in his dissenting opinion in describing the over-breadth of this statutory language:

> "This Court knows from other litigation, particularly United States v. Louisiana, E.D. La., Civil

[7] The preamble, Section 358, makes it amply clear that a "communist" is within the scope of the definition of "subversive person" and is a member of a "subversive organization". Cf. *Baggett,* p. 367, footnote 6.

> Action No. 2548, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy. *All* of the organizations promoting increased Negro voting registration therefore fall within the definition of 'communist party,' and any member could be prosecuted under the Louisiana Anti-Subversion Law."

And as this Court recently said in *NAACP* v. *Button*, *supra*:

> "It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes * * *. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens."

The constitutional vice of over-breadth raised by these Louisiana statutes is as serious as the problems considered by this Court in *NAACP* v. *Button* and *Cramp* v. *Board of Public Instruction*, both *supra*. As Judge Wisdom points out, these statutes were enacted by a state legislature which "regards the movement to increase Negro voting in the state as part of the communist conspiracy." See *United States* v. *State of Louisiana*, 225 F. Supp. 353, 378 (1963), prob. jur. noted 377 U. S. 987 (1964). The same legislature which in 1954 enacted the substantial features of the present statute designed to protect the "form of government" of Louisiana, also created a Joint Legislative Committee to "provide ways and means whereby our existing social order shall be preserved and our institutions and ways of life * * * maintained." This objective of preserving the "existing social order" was to be accomplished by a program "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions and laws of our State." La. Legislature, House Concurrent Resolution No. 27 (1954). See *United States* v. *State of Louisiana*, *supra*, at p. 378.

The subsequent history of the legislation is equally revealing. The principal state legislative agency presently responsible for the "operation, effect, administration, enforcement and needed revision"[8] of these laws is the Louisiana Joint Legislative Committee on Un-American Activities. The genesis of this Committee, responsible for the present 1960 version of the statute, is further indicative of the true thrust of the statute, for as the Court said in *Button* v. *NAACP, supra,* one must look "to the origins of the State Law and the setting in which it operated to find its discriminatory nature."

On May 16th, 1960, Governor Davis submitted to the regular Spring Session of the Legislature a series of proposals which in his words were "designed to preserve segregation and at the same time maintain law and order in our state."[9] This "segregation" package was designed as a response to the efforts of the Federal Courts in the Fifth Circuit to enforce the decision of this Court in *Brown* v. *Board of Education* and subsequent opinions invoking the Equal Protection Clause. See the full discussion of the Louisiana legislative attempts to circumvent the impact of *Brown* set forth in *Bush* v. *Orleans Parish School Board,* 194 F. Supp. 182, E. D. La., three judge court, opinion by Rives, *C. J.*

On May 18th the segregation "package" was introduced "aimed at Negro sitdowns at white lunch counters and other demonstrations."[10] On May 19th, three legislators, James Pfister, George Tessier of Orleans Parish and Alger Brown of Caddo Parish added their contributions to the solution of the problems presented by Governor Davis the day before. This was a House Concurrent resolution pro-

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[8] Louisiana House Concurrent Resolution #13, Regular Session, 1960.

[9] *New Orleans Times-Picayune,* May 17, 1960, pages 1, 4.

[10] *New Orleans Times-Picayune,* May 18, 1960, p. 19.

posing the establishment of a joint legislative committee on Un-American Activities. This was introduced as Resolution #13, of the 1960 Regular Session.[11] On June 15, 1960, the entire "segregation package" as it was commonly known, was passed by both houses, including Resolution #13 which was signed by the President of the Senate. It is perfectly clear that the establishment of the Joint Committee on Un-American Activities and the subsequent rewriting and enforcement of the "anti-subversive" legislation were designed to be an additional weapon in Louisiana's all-out battle to retain segregation as "our existing social order" and "way of life," see *United States* v. *Louisiana, supra.* The statement of the predecessor Joint Committee, set up two years earlier, known as the "Segregation Committee," after the introduction of Joint Resolution #13 and prior to its passage together with the entire package, is most revealing. On May 25th, 1960, the *New Orleans Times-Picayune* reported that "The Committee contends that espousal of integration in the South is a primary goal of the Communist Party in the United States at this time."[12] Nothing could more clearly indicate both the "origin" and "setting" of the legislation presently before the Court. Cf. *Button.* The Louisiana legislature and both its Joint Committees frankly viewed the entire area of "communist control" as another instrument in its efforts to repress the integration movement and maintain segregation as Louisiana's "way of life."[13] Cf. *United States* v. *Louisiana, supra.*

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[11] *New Orleans Times-Picayune,* May 19, 1960, p. 4.

[12] *New Orleans Times-Picayune,* May 25, 1960, Section 2, p. 4.

[13] This Court has had the occasion only recently to comment upon the "context" and "origin" of another Louisiana statute enacted during the same 1960 legislative session. In *Anderson* v. *Martin,* 375 U. S. 399, 403, the Court wrote in respect to Louisiana R. S. 18:1174.1, "this addition to the statute in the light of 'private attitudes' and pressures towards Negroes at the time of its enactment,

In *Cramp* this Court warned that "it would be blinking reality not to acknowledge that there are some among us always ready to affix a communist label upon those whose ideas they violently oppose." *Supra*, at p. 286. The context within which these statutes were passed and their attempted enforcement against these appellants (cf. *NAACP* v. *Button, supra*) reveal their constitutional invalidity. These statutes on their face lend themselves to

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could only result in that 'repressive effect' which 'was brought to bear only after the exercise of governmental power.' *Bates* v. *Little Rock* * * * ".

A graphic illustration of the true objectives of the Joint Legislative Committee which throws additional light upon the purpose behind the "selective enforcement" of the statute were the recent legislative moves in the Louisiana Senate this year concerning the future of the Committee. The first proposal made by the new administration of Governor McKeithen was to create a new Louisiana State Security Commission which would replace the Louisiana State Sovereignty Commission and the Joint Legislative Committee on Un-American Activities. *New Orleans Times-Picayune*, May 19, 1964. The reasons advanced for the "absorption of the Un-American Activities Committee", were as follows: "Committee sources said the committee had outlived its usefulness and *its work was duplicated by the Sovereignty Commission*". (Emphasis added). *New Orleans Times-Picayune*, May 10, 1964. After some backing and filling an agreement was reached to continue the Joint Committee's separate existence. In the course of debate there was consensus of opinion from both supporters and opponents of continuing the separate existence of the Committee on the Committee's preoccupation with civil rights and anti-segregation activity. Thus Senator J. D. DeBlieux of Baton Rouge, in opposing continued separate existence said as reported in the *New Orleans-Times Picayune*, June 30, 1964, "I can't see", he said, "where they have discovered all that much un-American activities." "Often," he said, "the committee has concerned itself more with states rights and segregation than with un-American activities." And in support of continued separate existence Senator George Tessier of New Orleans, one of the three original authors of the legislation said, 'Under the guise of objecting to a deadhead committee the whole purpose of the committee is lost." * * * "There has been a lot of confusion," he said, "on civil rights and communism and the basic principle of Americanism." *New Orleans Times-Picayune*, June 30, 1964.

"selective enforcement" which may result in "broadly curtailing group activity" and may "easily become a weapon of oppression." Cf. *NAACP* v. *Button, supra.*

The interrelation between the definitions of "communist" and "communist party" with the other provisions and definitions of the statute leads again to the same conclusion. For example, the definition of "organization" is so broad and loosely drawn as to sweep within its ken any conceivable association or grouping of people. Cf. *Herndon* v. *Lowry, supra; Stromberg* v. *California, supra.*

Is it therefore an "absurdity," cf. *Cramp, supra,* to suggest that an organization or informal group of individuals which sought by active means to abolish the system of segregation in the State of Louisiana might well find itself caught up in this dragnet definition? Even peaceful protest has been characterized by certain state authorities in Louisiana as "illegal" methods of obtaining social change. Cf. *CORE* v. *Douglas,* 318 F. 2d 95, (CA 5, 1963). And is it an "absurdity" to suggest that it is possible that authorities of this State consider the system of segregation to be deeply ingrained into the "constitutional form of government of the State of Louisiana"? Cf. *Bush* v. *Orleans Parish School Board, supra.*

We do not have to speculate as to whether in affixing "a communist label upon those whose ideas they violently oppose," *Cramp* at p. 286, the Louisiana authorities will seek to utilize these vaguely drawn statutory criteria for "selective enforcement against unpopular causes." *Button* at p. 434. The Joint Legislative Committee on Un-American Activities, the legislative agency responsible for the supervision of the statutes here involved [14] was admittedly primarily responsible for the indictments of these appellants, an officer of a civil rights association and two civil rights attorneys. These were the first prosecutions under

[14] See House Concurrent Resolution #13, Regular Session, 1960.

the statutes since the State Supreme Court had held an earlier version of the law superseded by federal legislation,[15] and any illusions as to the purpose of this "selective enforcement," *Button*, at p. 434, were dispelled by the announcement by the Chairman of the Committee to the press that the raids and arrests resulted from "racial agitation" (R. 92). But perhaps the most striking evidence of the real thrust of the legislation came shortly after the ominous prediction of Judge Wisdom in describing the overbreadth of the statutory language that "all of the organizations promoting increased Negro voting registration therefore fall within the definition of 'communist party' and any member could be prosecuted under the Louisiana Anti-Subversion Law" (R. 90, 91). Only two months later the Louisiana Joint Committee issued a report concluding that the Southern Christian Leadership Conference under the Chairmanship of Dr. Martin Luther King and the Student Non-Violent Coordinating Committee were "substantially under the control of the Communist Party through the influence of the Southern Conference Educational Fund and the Communists who manage it."[16]

In *Cramp*, *Button* and *Baggett*, this Court emphasized the unconstitutional vagueness of the statutory definitions involved by posing a series of hypothetical questions illustrating the overreach of the legislation. Here questions indicating the possible coverage of the penal provisions cannot be characterized by the State as "absurd," see *Cramp*, "speculative," see *Button*, or "fanciful," see *Baggett*. With deadly seriousness the state governmental agency most intimately preoccupied with the enforcement of these laws has already proposed that two of the most

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[15] *State* v. *Jenkins*, 236 La. 300, 107 So. 2d 648 (1958). See Point II, *infra*.

[16] Report No. 5, April 13, 1964, Joint Legislative Committee on Un-American Activities, State of Louisiana, "Activities of the Southern Conference Educational Fund, Inc."—Part 2 at p. 126.

active organizations in the nation dedicated to the obtaining of equality and civil rights for Negro citizens in the states of the south through peaceful and non-violent measures, are proscribed organizations within the meaning of the Louisiana statutes and are accordingly subject to all of the penalties and proscriptions of that law.

More than this, with an equal seriousness this state legislative agency would subject the many thousands of members, adherents, supporters and sympathizers, of these two civil rights organizations in the State of Louisiana to all of the harsh penal provisions of the Statute. The questions have ceased to be hypothetical. Every one of the thousands of followers of Dr. King, every one of the many young students who have supported the Student Non-Violent Coordinating Committee, in truth every active adherent of equal constitutional rights for Negro citizens in Louisiana, stand presently threatened with penal enforcement of the statute. The vice of unconstitutional vagueness has never been more urgently illustrated. The Louisiana application of the Florida, Virginia and Washington formula, cf. *Cramp*, *Button* and *Baggett*, is simple and direct. An unduly vague and sweepingly broad legislative proscription of "communist" and "subversive" activities is created. Cf. *Baggett*. Racial integration and equal civil rights, concepts powerful state agencies "violently oppose" are affixed with a "communist label", cf. *Cramp*, and are identified as aims and objectives supported or desired by "communists" or the "Communist Conspiracy". Cf. *Baggett*. The thrust of the statute is then "selectively enforced" against the "militant Negro civil rights movement [which] has engendered the intense resentment and opposition of the politically dominant white community." Cf. *Button*. It is becoming increasingly clear that the only barrier existing to the wholesale utilization of this formula in Louisiana is the Constitution of the United States.

(b) The definition of "Communist Front Organization" in Section 359, subsection (3).

1. The definition of "Communist Front Organization" in Section 359, subsection (3), is an additional variation upon the basic statutory scheme rejected in Baggett.[16a] It is the operative provision upon which the registration requirements of Section 360 and the penal provisions of Section 364(7) depend.[17] Moreover, it is inextricably bound into the definitions of "subversive organization", Sec. 359(5), "Foreign Subversive Organization" Sec. 359(6) and "subversive person" Sec. 359(8). This is apparent because both the statutory preambles Section 358 and Section 390, make it amply clear that "communist organizations" are by legislative presumption organizations which, in the words of Subsections 5, 6 and 8,

> "advocate, abet, advise or teach activities intended to overthrow, destroy or to assist in the overthrow or destruction of the State of Louisiana, * * * by revolution, force, violence, or other unlawful means, * * * or which seeks by unconstitutional or illegal means to overthrow or destroy the government of the State of Louisiana * * * and to establish in place thereof any form of government not responsible to the people of the State of Louisiana under the Constitution of

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[16a] "Section 359, subsection (3) 'Communist Front Organization' shall, for the purpose of this act include any communist action organization, communist front organization, communist infiltrated organization or communist controlled organization and the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization."

[17] We discuss independently the constitutional invalidity of the registration provision at Point I, 3, *infra*.

the State of Louisiana." See Section 359(5), definition of "subversive organization". Cf. *Baggett, supra*, at pp. 362-3.

The definition of "communist front organization" is therefore a thread running through the entire statute and decisive to its operation. If the statutory definitions of "subversive organization", "foreign subversive organization" and "subversive persons" are "lacking in terms susceptible of objective measurement" and "failed to inform as to what the State commanded or forbade", cf. *Baggett* and *Cramp, supra*, what can be said about a statutory definition which invokes regulatory and punitive responses upon such concepts as "communist front", "communist infiltrated", "communist controlled" organizations without further legislative criteria.[18]

Furthermore, it is obvious that the definition of "communist party" as "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy", subsection (2), must be read into subsection (3). An organization which falls within the proscription of subsection (2) *a fortiori* falls within subsection (3). The constitutional infirmities of the definition in subsection (2), cf. *Baggett, Cramp* and discussion *supra* merely intensifies the incredibly broad and dragnet character of the definitions in subsection (3).[18a]

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[18] Compare the specific legislative criteria set forth in the Communist Control Act of 1954. Title 50 U. S. C. Sections 782, 844. Even with those detailed legislative guides this Court is presently considering the constitutionality in a federal statute of such sweeping definitions. See *American Committee for the Protection of the Foreign Born* v. *SACB*, cert. granted 377 U. S. 915.

[18a] The provisions of R. S. 364 (4) (5) and (6) which make it a felony to "assist in the formation or participate in the management or contribute to the support of any subversive organization or foreign subversive organization" or to "destroy any books, records or files

But once again, unlike in *Button, Cramp* or *Baggett*, we do not have to test the breadth of these definitions by speculative questions. The Louisiana Joint Legislative Committee has already solemnly found that the entire "civil rights movement has been grossly and solidly infiltrated by the Communist Party". Report No. 5, April 13, 1964, at page 125. Clearly then the statutory sanctions applicable to "communist infiltrated" organizations via subsection (3) according to the state agency entrusted by the Legislature of Louisiana with supervision over the "operation, effect, administration [and] enforcement" [19] of these statutes are applicable to what the Legislative Committee broadly terms the "civil rights movement". Report No. 5, *supra* at page 125.

We do not have to linger on the frightening implications of this blunt and frank expression of legislative intention. The Joint Legislative Committee has already demonstrated its power to force raids and prosecutions under the statute R. 92. If the vague and sweeping provisions of this law stand unchallenged no organization, indeed no person seeking equal civil rights for Negro citizens in the State of Louisiana, will be safe from harassment and criminal prosecution under this statute.

2. Perhaps recognizing the impossible vagueness of such concepts as "communist front", "communist infiltrated", or "communist controlled", the legislature at-

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or secrete any funds in this state of a subversive organization or a foreign subversive organization" or "become or * * * remain a member of a subversive organization or a foreign subversive organization" must fall under *Baggett*. The vice of unconstitutional vagueness created by the statutory definitions condemned in *Baggett* is compounded here by such phrases as "assist in the formation", "participate in the management" or "contribute to the support."

[19] See Louisiana House Concurrent Resolution Vol. 13, Regular Session 1960.

tempted to assist in what might otherwise be an evidentiary nightmare by providing a built-in statutory presumption as to the "factual status of any such organization". Thus, subsection (3) of Section 359 provides that "the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States, or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization, a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization." Section 359, subsection (3). But this legislative presumption is itself grossly violative of the due process clause of the Fourteenth Amendment.

With the exception of the Subversive Activities Control Board all the citations or identifications upon which the presumption rests are ex-parte, unilateral actions arrived at without judicial or quasi-judicial proceedings or the opportunity for judicial review. But this Court has held that the imposition of any sanctions whatsoever, civil or criminal, based upon such methods of designating alleged subversive organizations is violative of the Due Process clause. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123. This inclusion in the Louisiana statutes of a form of designation of proscribed organizations which has already been held violative of due process renders the statutes themselves violative of due process.

The Washington statute which was before the Court in *Baggett* originally contained a provision similar in character to the method of designation provided for in subsection (3). The statute relied in part for its designation of "subversive organizations" upon listings by the Attorney General of the United States. The validity of this

method of designation under the Due Process Clause never reached this Court because in an earlier stage of the litigation the Washington State Supreme Court itself struck down the provisions as violation of due process. *Nostrand* v. *Balmer,* 335 P. 2d 10 (S. Ct. Wash.).

The Louisiana method of designation even more flagrantly violates the requirement of the process. Unlike the Washington provision, the Louisiana statute would utilize citations or identifications as to the character of organizations by committees or sub-committees of Congress as "presumptive evidence" of the status of organizations under the statute. Sec. 359(3). This Court has frequently had the occasion of commenting upon the absence of substantial judicial safeguards or limitations in the proceedings before Congressional Committees or Sub-committees which have resulted in the public characterization of organizations as "subversive" or "communist controlled". See for example *Watkins* v. *United States,* 354 U. S. 178. Regardless of any differences within the Court as to legislative authority to engage in such public characterizations, cf. *Watkins* v. *United States, supra,* with *Barenblatt* v. *United States,* 360 U. S. 109, there can be little doubt that Louisiana's efforts to affix criminal sanctions upon such ex-parte Congressional conclusions violates the mandate of the Due Process Clause. *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra.* Cf. *Nostrand* v. *Balmer, supra.*[20]

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[20] This method of designation of proscribed organizations also would seem to be violative of due process in that it constitutes, in part, an attempt to adopt citizens, identifications or rulings of federal agencies which may be made in the future. State statutes which attempt to adopt further federal actions, whether they be rules, citations, regulations or statutes, have been consistently held to be void as violative of due process. *State* v. *Urquhart,* 50 Wash. 2d 131, 310 Pac. 2d 261. See also, *Brock* v. *Superior Court,* 9 Cal. 2d 291, 71 P. 2d 209, 114 A. L. R. 127; *Florida Industrial Commission* v. *State ex rel. Orange State Oil Co.,* 155 Fla. 772, 21 So. 2d 599;

There is an equally serious objection under the Due Process Clause to this method of designation of proscribed organizations. In *Louisiana ex rel. Gremillion* v. *NAACP* (E. D. La. New Orleans Div. 1960), 181 Fed. Supp. 37, aff'd *Louisiana* v. *NAACP*, 371 U. S. 415, a three-judge District Court struck down Sec. 386 of the statute presently before the Court holding that "The statute would require the impossible. It is clearly unconstitutional." (Opinion by Judge Wisdom).

This Court affirmed the decision of the three-judge District Court in words completely appropriate to Subsection (3):

> "The District Court commented that the statute 'would require the impossible' of the Louisiana residents or workers. 181 F. Supp. at page 40. We have received no serious reply to that criticism. Such a requirement in a law compounds the vices present in statutes struck down on account of vagueness. Cf. *Winters* v. *People of State of New York*, 333 U. S. 507, 68 S. Ct. 665, 92 L. Ed. 840. It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know (cf. *Tot* v. *United States*, 319 U. S. 463, 63 S. Ct. 1241, 87 L. Ed. 1519) or alternatively to refrain from a wholly lawful activity."

Sec. 359(3) equally "would require the impossible." To avoid serious penal sanctions any citizen of the state would be required to keep himself informed at every moment as to any citation or identification made in any

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Florida Industrial Commission v. *Peninsular Life Insurance Co.*, 152 Fla. 55, 10 So. 2d 793; *State* v. *Webber*, 125 Me. 319, 133 A. 738; *State* v. *Gauthier*, 121 Me. 522, 118 A. 380, 26 A. L. R. 652; *State* v. *Intoxicating Liquors*, 121 Me. 438, 117 A. 588; *In re Opinion of the Justices*, 239 Mass. 606, 133 N. E. 453; *Dearborn Independent, Inc.* v. *City of Dearborn*, 331 Mich. 447, 49 N. W. 2d 370; *Smithberger* v. *Banning*, 129 Neb. 651, 262 N. W. 492, 100 A. L. R. 686; *Holgate Bros. Co.* v. *Bashore*, 45 Dauph. Co. Pa. 274; *Ex parte Lasswell*, 1 Cal. App. 2d 183, 36 P. 2d 678.

way by any of the agencies listed in the sections. Before joining any organizations he would be required to conduct an extraordinary and exhaustive investigation to discover whether over an indefinite period of years the organization had ever been so identified in any way by any of these agencies. This "would require the impossible". See *Louisiana* v. *NAACP, supra,*

The opinion of this Court affirming the three-judge District Court in *Louisiana* v. *NAACP, supra,* wholly disposes of the method of designation in Subsection (3). This provision not only "would require the impossible of Louisiana residents or workers * * *" but "compounds the vices present in statutes struck down on account of vagueness * * *". *Louisiana* v. *NAACP, supra.* And as in respect to Section 386 invalidated in the former case, it is equally "not consonant with due process" to permit a person to be imprisoned as a result of the existence of facts "that he cannot be expected to know". *Louisiana* v. *NAACP, supra.*

3. Subsection (3) further violates the Due Process Clause in that it creates unconstitutional presumptions of guilt. The statute provides that the fact that an organization has been cited or identified in any way by certain specified federal officers or agencies "shall be considered presumptive evidence of the factual status of any such organization." This presumption is then applicable in the penal provisions of the statutes, Sec. 364 and 390.2. Such a presumption is clearly unconstitutional. The legislature may not declare an individual guilty or presumptively guilty of a crime. *McFarland* v. *American Sugar Refining Co.,* 241 U. S. 79. The policy underlying this principle was recently restated fully by the Fifth Circuit in *Barrett* v. *United States,* 322 F. 2d 292.

> "The unquestioned policy of the criminal law has placed upon the prosecution the burden of proving beyond a reasonable doubt all facts neces-

> sary to the defendant's guilt. The Government starts with both the burden of proof and the burden of persuasion. A statute which shifts either one or both of these burdens to an accused is difficult to reconcile with our hard-earned heritage of fair trials. If the shift compels an accused to come forward with an exculpatory explanation—or else, before the prosecution has made a substantial showing of probability of guilt, the presumption collides with the most fundamental canon of criminal law—the presumed innocence of the defendant."

See also *Mann* v. *United States*, 319 F. 2d 292 (C. A. 5, 1963).

This presumption shifts the burden of proof to a defendant in the delicate arena of First Amendment liberties under conditions in which he would virtually be required in order to defend himself to do "the impossible". Cf. *Louisiana* v. *NAACP, supra.* A potential defendant charged with membership in an organization designated as "subversive" by a Congressional Committee would be required to come forward with affirmative evidence negating a characterization based upon evidence he might well be totally ignorant of, or evidence which might have been rejected out of hand as unreliable if the state had been required to meet its normal burden of proof. As this Court recently pointed out "the power to create presumptions is not a means of escape from constitutional limitations". *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 84 S. Ct. 710, 728. See also, *Bailey* v. *Alabama*, 219 U. S. 219.

The presumption created by subsection (3) collides with the most fundamental canons of our criminal law in the area of our most protected liberties. It permits a form

of harassment of citizens wholly in violation of the most elementary traditions of American justice.[21]

4. The method of designation of organizations in subsection (3) further offends against the Due Process Clause in that it constitutes a separation of the power of a state legislature to characterize conduct as a criminal, from the responsibility of that body, to control the use of that power. *Sweezy* v. *State of New Hampshire*, 354 U. S. 234. In *Sweezy* this Court held that while the concept of separation of power embodied in the Federal Constitution may not be mandatory upon State governments, nevertheless where a violation of this concept "causes a deprivation of the constitutional rights of individuals" this would result in a "denial of due process of law". *Sweezy* at p. 255.

The holding of this Court in *Sweezy* is directly applicable here. The Louisiana legislature has improperly delegated its legislative duty to the Attorney General of the United States, the Subversive Activities Control Board and the committees and subcommittees of Congress. This improper delegation of legislative power results in a serious deprivation of the constitutional rights of individuals, cf. *Louisiana* v. *NAACP, supra*, and constitutes a denial of due process of law. *Sweezy* v. *New Hampshire, supra.*

[21] The "rational connection test" of the validity of a statutory presumption, see *Mobile, J. & K. C. R. R. Co.* v. *Turnipseed*, 219 U. S. 35, cannot save these presumptions of guilt. As we have pointed out, this method of designation of proscribed organizations is violative of the due process clause in several serious respects. See *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra; Nostrand* v. *Balmer, supra; Louisiana* v. *NAACP, supra.* A method of designation which is itself violative of due process could hardly be considered a "reasonable" method of ascertaining a fact. Compare *Barrett* v. *United States, supra.* Moreover, it can scarcely be argued, in light of *Joint Anti-Fascist Refugee Committee, supra*, that an ex-parte designation that an organization is subversive is necessarily a reasonable proof of the fact. The inferences would seem to be rather to the contrary. See Gellhorn, Report on a Report of the House Committee on Un-American Activities, 60 Harv. L. R. 1193 (1947).

(c) The definition of "communist propaganda" in Section 390.1.

We have centered the Court's attention upon the invalidity of the essential operative provisions of the statute, the definitions of "subversive organization," "foreign subversive organization" and "subversive persons" already held unconstitutionally vague in *Baggett*, and Louisiana's primary additions to the statutory scheme, the definitions of "Communist Party" and "Communist-Front Organization." One other principal definition remains upon which serious penal sanctions rests. The definition of "communist propaganda" in Sec. 390.1, which controls the penal provision of Sec. 390.2, is as this Court commented in *Cramp* "extraordinary." The prohibited (propaganda" is "any oral, visual, graphic, written, pictorial or other communication" "issued, prepared, printed, procured, distributed or disseminated by, among others, 'any communist organization' which 'communication or material'" is

> "(a) reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any way influence a recipient or any section of the public with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party, or promote in the United States or the state of Louisiana, any attitude or state of mind that tends to undermine the determination of any citizen of the United States or of any of the various states to uphold and defend the Constitution of the United States or the constitutions of the respective states, or tends to create or encourage disrespect for duly constituted legal authority, either federal or state, or
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> "(b) which advocates, advises, instigates or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in the United States the state of

> Louisiana or any other American republic, or the overthrow of any government or political subdivision of the United States, the state of Louisiana or any other American republic by any means involving the use of force or violence."

The statute then provides that delivering, distributing, disseminating or storing such literature in Louisiana shall be a felony punishable by a maximum of six years imprisonment and $10,000 fine, Secs. 390.3, 390.7.

A definition of "propaganda" which sweeps into its scope any "communication or material * * * which advocates, instigates or promotes any racial, social, political or religious disorder * * *" or which "tends to create or encourage disrespect for duly constituted legal authority, either federal or state," obviously violates every principle this Court has ever enunciated to enforce the First and Fourteenth Amendments. Rarely has a statute ever been brought before this Court so obviously void for vagueness and over-breadth. A reading of these definitions suggests the conclusion that their enactors never seriously contemplated that these proscriptions would ever survive serious constitutional scrutiny.

This definition of forbidden literature would prohibit on its face the simplest written expression of opinion which might be deemed to be contrary to the interests of the established authorities of the state of Louisiana. It seems unnecessary to ask the question as to whether we have returned to the point in this country where citizens may be imprisoned for publishing statements which "tend to create or encourage disrespect for duly constituted legal authority, either federal or state." Only last Term the Court had the occasion to remind the Nation that the attacks of Jefferson and Madison upon the Sedition Act of 1798 "has carried the day in the course of history." *New York Times* v. *Sullivan, supra* at p. 723. Criminal prosecution for the dissemination of literature, which in

the opinion of constituted authorities, may "promote any racial, social, political or religious disorder" is so patently a violation of the First and Fourteenth Amendments as to require scant attention in this Court. The definitions of "communist propaganda" and the penal provisions of Sections 390.3 and 390.7 are clearly unconstitutional under the fundamental principles recently reiterated by the Court in *New York Times* v. *Sullivan, supra.* See also *Aptheker* v. *Secretary of State,* 84 S. Ct. 1659; *Henry* v. *City of Rock Hill,* 376 U. S. 776, 84 S. Ct. 1042.

3. The registration provisions in Section 360 violate on their face the First, Fifth and Fourteenth Amendments.

1. The registration provisions set forth in Section 360 incorporate both the definition of "communist" contained in 359(1) and "communist front organization" contained in 359(3). Any person falling within the scope of either definition is required by virtue of Section 360 to register with the Department of Public Safety of the state on or before the fifth consecutive day such a person remains in the state. Registration must include such information as purpose of presence in Louisiana, sources of income, organizations registrant is a member of, and "any other information requested by the department of public safety which is reasonably relevant" to the purpose of the statute. The registration records are open to inspection by any law enforcement officer of the state or the United States and at the "discretion of the Department of Public Safety" the records may be opened to the general public. Sect. 360(A)(B)(C). Failure to register is punishable by a maximum of ten years imprisonment and a fine of $10,000. Sect. 364(7); 365.

All of these inhibiting regulations are imposed upon any person falling within the definition of "communist" in 359(1) or any person who is a member of an organization falling within the definition of "communist front organization" in 359(3). We have already pointed out

that 359(1) and 359(3) are unconstitutionally vague under the rule of *Baggett* v. *Bullitt; Cramp* v. *Board of Public Instruction; Lanzetta* v. *New Jersey* and *Connolly* v. *General Construction Co.*, all *supra*. See subsections 2(a) and (b) *supra*. A regulatory scheme based upon such unconstitutionally vague standards falls as violative of the due process clause. *Baggett* v. *Bullitt; Cramp* v. *Board of Public Instruction; Connolly* v. *General Construction Co.*, all *supra*. See also *U. S.* v. *Cardiff*, 344 U. S. 174; *Champlin Refining Co.* v. *Corporation Commission of Oklahoma*, 286 U. S. 210.[22]

And as the Court pointed out in *Baggett* and in *Cramp*, "the vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution" 368 U. S. 778, 287. The registration provisions of Section 360, like the oath requirements in *Baggett* and *Cramp* are "indefinite statutes whose terms, even narrowly construed, abut upon sensitive areas of First Amendment Freedoms". *Baggett* at p. 372.

And as in *Baggett*, the "uncertain meanings" of the categories of persons required to register will mean that all citizens will "steer far wider of the unlawful zone", *Speiser* v. *Randall*, 357 U. S. 513, 526, "than if the boundaries of the forbidden areas were clearly marked". *Baggett* at p. 372.

Louisiana citizens involved in any forms of political expression will as the Court has warned in *Baggett*, avoid the

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[22] The registration provisions in Sect. 360 also fall as violative of due process under the rule of *Lambert* v. *California*, 355 U. S. 225. In *Lambert* conviction under a five day registration period requirement for convicted persons was reversed where the defendant had no knowledge of any duty to register and there was no probability of any such knowledge. Here, the unduly vague requirements create the same circumstances. No one can be sure with any certainty of any requirement to register under the Statute and there is little probability of any such knowledge.

inhibitions of registration on the one hand, or criminal prosecution for failure to register on the other hand "only by restricting their conduct to that which is unquestionably safe" 377 U. S. 360 at p. 372. And as Mr. Justice White concluded for the Court in *Baggett*, "Free speech may not be so inhibited" 377 U. S. 360 at p. 372. *Smith* v. *California*, 361 U. S. 147; *Stromberg* v. *California*, 283 U. S. 359; See also *Herndon* v. *Lowry*, 301 U. S. 242.

2. The registration provisions of Section 360 and the penal sanctions attached for failure to register are further violations of due process under the recent decision of the Court in *Aptheker* v. *Secretary of State*, 84 S. Ct. 1659. Section 360 contains the same vice as Section 6 of the Communist Control Act invalidated by the Court in *Aptheker*. Section 360 applies whether or not a person "actually knows or believes that he is a "communist" within the broad meaning of the Louisiana definitions. Section 360 does not even mention any requirement of knowledge in respect to designated "communists". The registration provision in the Louisiana statute similar to the statute before the Court in *Aptheker* "sweeps within its prohibition both knowing and unknowing members". This is particularly dangerous where the definition of "communist" has such a broad sweep as Section 359(1) and (2). See subsection 2(a) *supra*. In *Aptheker* the Court this last Term, restated the holding of *Wieman* v. *Updegraff*, 344 U. S. 183 that the due process guarantee of the Constitution is violated where a State legislates against individuals "solely on the basis of organizational memberships without regard to their knowledge concerning the organizations." As the Court concluded in *Wieman*, "Indiscriminate classification of innocent with knowing activity must fall as an assertion or arbitrary power" 344 U. S. at 191.

Furthermore, the blanket registration requirement in Section 360 with its onerous conditions and penal sanctions like the *Aptheker* statute "renders irrelevant the member's

degree of activity in the organization and his commitment to its purpose". *Aptheker* at p. 1666. In this connection Mr. Justice Goldberg restated the conclusion of the Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, 136, that "Men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." Cf. *Schware* v. *Board of Examiners*, 353 U. S. 232 at 246. This comment is particularly appropriate in assessing the validity of the requirement of registration for all members of organizations falling within the broad sweep of the statutory definition of "communist front organizations".[23]

3. The registration requirements in Section 360 violate the 14th Amendment in that they interfere with and impede the fundamental right of American citizens to travel freely within the borders of the United States, from state to state without restriction and limitation. The right to move freely from state to state is a privilege and immunity of national citizenship. *Edwards* v. *California*, 314 U. S. 160, (concurrence at 177 and 182). The right to travel within the borders of this country as the right to travel abroad, is a part of the "liberty" of which the citizen cannot be deprived without due process of law. *Aptheker* v. *Secretary of State, supra; Kent* v. *Dulles*, 357 U. S. 116. And as the Court held in *Kent* "Travel abroad, like travel within the country, may be as close to the heart of an individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our values." *Kent*, at p. 125, 6.

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[23] The Court in *Aptheker* points out that criminal penalties under the so-called "membership clause" in the Smith Act were limited in *Scales* v. *United States*, 367 U. S. 203, to only "active" members who have a "guilty knowledge and intent". It is significant that the Government in *Aptheker* conceded that "neither the words nor history of Section 6 [of the Communist Control Act] suggests limiting its application to "active members". Footnote 9 at p. 1666. Similarly here "neither the words nor history" of the section suggest the slightest intention on the part of the legislature to limit the scope of the registration requirement to "active" members.

If freedom of movement, the right to move freely from state to state is a privilege and immunity of national citizenship, *Edwards* v. *California, supra,* Louisiana may not restrict or impede that privilege and immunity by requiring that, after five days of physical residence in that State, citizens of other states must either submit to the rigours and exposures of the registration procedure if their otherwise lawful political activities fall within the broad sweep of the statute's proscriptive definitions, chance criminal prosecution, or leave the state before the five days expire. Nor may Louisiana argue that citizens of other states may remain in Louisiana beyond the five-day period if they abandon their membership in the proscribed organization. This very argument was advanced and rejected in *Aptheker.* As the Court there stated, "Since freedom of association is itself guaranteed in the First Amendment, restrictions imposed on the right to travel cannot be dismissed by asserting that the right to travel could be fully exercised if the individual would first yield up his membership in a given association." *Aptheker,* p. 1664.

Mr. Justice Douglas, concurring in *Aptheker* has pointed out that "freedom of movement is kin to the right of assembly and to the right of association", and that "this freedom of movement is the very essence of our free society, setting us apart". *Aptheker* at page 1671. Louisiana's registration provisions limiting free access into that state to a five-day period is a serious restraint upon this essential freedom of American citizens. Representatives of civil rights organizations, lawyers who are asked to represent otherwise undefended victims of racial discrimination, teachers who volunteer to teach at voter registration schools, all will be deterred from entering and remaining in the State if they fear they may be associated with any of the hundreds of lawful organizations which may fall within the broad proscriptions of the Louisiana Statutes. Louisiana may not thus limit and restrict a privilege and

immunity of American citizens so intimately related to the exercise of fundamental liberties protected by the First and Fourteenth Amendments.[24]

4. The registration requirement in Section 360, as enforced by Section 364(7), violates on its face the privilege against self-incrimination. *Blau* v. *United States*, 340 U. S. 159; *Quinn* v. *United States*, 349 U. S. 155. In *Malloy* v. *Hogan*, 378 U. S. 1, this Court has now held that the privilege against self-incrimination contained in the Fifth Amendment is safe-guarded against state action by the Fourteenth Amendment. Louisiana's registration requirements are a frankly open violation of the constitutional privilege. See *People* v. *McCormick*, 228 P. 2d 349, 102 C. A. 2d 954. Louisiana has made it a felony to "become or remain a member of a subversive organization or a foreign subversive organization". Section 364(6). Louisiana simultaneously requires members of such organizations to register the fact of membership.[25] It is impossible to conceive of a more open disregard of the constitutional privilege. Cf. *Communist Party* v. *U. S.*, 331 F. 2d 807, cert. denied 377 U. S. 968. The requirement of registration of membership in the statutorily proscribed organizations likewise violates the constitutional privilege in that the fact of registration may tend to incriminate the registrant under Federal Laws.[26] Under the recent decision of the Court

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[24] The registration provisions also are an undue burden upon interstate commerce in violation of the Commerce Clause of the Constitution, in that many persons falling within the restrictive provisions may be entering the State and intending to remain there in the course of the conduct of interstate business. Cf. *Edwards* v. *California, supra.*

[25] We have described previously the interrelationship between the statutory definition of "communist", "communist party", "communist front organization", and "subversive organization".

[26] Cf. the Smith Act and the Internal Security Act.

in *Murphy* v. *Waterfront Commission*, 378 U. S. 52, a state may not compel a citizen to give evidence which might be used against him under the laws of another jurisdiction.

Louisiana's registration provision is a naked effort to force citizens to incriminate themselves both under state and federal laws. The statute was written as if the privilege, "One of the great landmarks in man's struggle to make himself civilized", *Ullman* v. *U. S.*, 350 U. S. 427, 426, did not exist. [27]

4. The Louisiana legislation is not narrowly drawn to meet legitimate Governmental purposes.

The Louisiana statute further violates the constant insistence of this Court that in the area of the First Amendment even though governmental design be legitimate and substantial, that purpose may not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. Only this June the Court has emphatically restated this "well established" principle for testing whether restrictions imposed are consistent with the liberty guaranteed in the Constitution; "It is a familiar and basic principle, recently reaffirmed in *NAACP* v. *Alabama*, 377 U. S. 288, 84 S. Ct. 1302, 1314, that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *Aptheker* v. *Secretary of State, supra*, at pages 1664-5. See *NAACP* v. *Button*, 371 U. S. 415; *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293; *Talley* v. *California*, 362 U. S. 60; *Schware* v. *Board of Examiners*, 353 U. S. 232; *Martin*

[27] Unlike *Communist Party* v. *SACB, supra*, this question is not raised here prematurely. Appellees have threatened to enforce this statute and in particular the criminal provisions against the appellants. Appellants have been indicted for failure to register. Accordingly, the impact of the privilege against self-incrimination upon the requirement to register is properly before the Court.

v. *City of Struthers*, 319 U. S. 141; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Schneider* v. *State*, 308 U. S. 147.

In recently applying this principle the Court in *NAACP* v. *Alabama, supra*, utilized the criteria set forth in *Shelton* v. *Tucker*, 364 U. S. 479, at 488: "The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." See also *Sherbert* v. *Verner*, 374 U. S. 398.

The legislative purpose underlying the statute purports to be a concern with the security of the state, an assertion of the state's inherent right to "self preservation". See West-Ellis opinion, R. 66.[28] But more than ample legislation exists on the statute books of Louisiana and the federal government to meet any actual threat or danger to the security of that state. See, for example, *Louisiana Laws.* R. S. Title 14, Sec. 113 (treason); R. S. 14, Sec. 114 (misprison of treason); R. S. 14, Sec. 115 (criminal anarchy); R. S. 53, Sec. 201 (sabotage). The full panoply of federal laws in this area are well known. See for example the Smith Act of 1940 as amended in 1948, 18 U. S. C. 2385; the Internal Security Act of 1950, 50 U. S. C. 761 *et seq.*; the Communist Control Act of 1954, 50 U. S. C. 841.

The right of Louisiana to "self-preservation" is of course fully protected on her own statute books and through national legislation. The simple fact of the matter is that the Louisiana statute is not narrowly drawn to meet a specific legitimate governmental problem. And, as this Court said in *Shelton* v. *Tucker, supra*, "the unlimited and indiscriminate sweep of the statute now before us brings it within the ban of our prior cases."

The "unlimited and indiscriminate sweep" of this statute is not accidental. Both the context within which it was

[28] We discuss later the impact of state legislation in this area intruding upon existing federal legislation based upon Congress' unquestioned power under the Constitution to safeguard the Nation's security. Cf. *Pennsylvania* v. *Nelson*, 350 U. S. 497.

enacted and its threatened enforcement, cf. *Button* v. *NAACP, supra,* both against these appellants and the entire "civil rights movement", see Joint Legislative Committee Report No. 5, *supra,* vividly illustrates that the true thrust of the statute is directed against the expression of views and the exercise of constitutional rights distasteful to the constituted authorities of the State of Louisiana. The candidly expressed intention of the Joint Legislative Committee is to use this statute to curb the thousands upon thousands of Negro and white citizens of Louisiana who increasingly seek to exercise the fundamental liberties of the First Amendment to obtain in that State the enforcement of the equal rights guaranteed in the Fourteenth and Fifteenth Amendments. But criminal sanctions and sweeping repression are not the methods America has chosen to provide the framework for the interplay of social and political concepts.

In this sense the majority below was perhaps accurate in saying that in this case "the very vitals of our constitutional system of Government are on the line." West-Ellis opinion, R. 74. The stern requirement that statutes trenching upon the area of First Amendment liberties must be narrowly and precisely drawn reflects the fundamental philosophy of American constitutional democracy. The words of Mr. Justice Brandeis, concurring in *Whitney* v. *California,* 274 U. S. 357, 374, we have recently been reminded, *New York Times* v. *Sullivan, supra,* at 270, sum up the high importance of this concept:

> "Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without

> free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."

This guiding philosophy of government is not limited to the advocacy of concepts of social change comfortable to established authority in a state. As this Court recently reminded the nation, "the constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people' *Roth* v. *U. S.*, 354 U. S. 476, 484". *New York Times* v. *Sullivan, supra,* at p. 269. See also *Henry* v. *City of Rock Hill,* 376 U. S. 776; *Edwards* v. *South Carolina,* 372 U. S. 229; *NAACP* v. *Button, supra; De Jonge* v. *Oregon,* 299 U. S. 353; *Stromberg* v. *California,* 283 U. S. 359.

If the authorities of the State of Louisiana disagree with the activities of these appellants and the many thousands of Negro and white citizens of the State who seek enforcement of the Fourteenth and Fifteenth Amendments their recourse does not lie in enforcement of penal statutes broadly abridging First Amendment liberties. As this Court recently found it necessary to restate: "Under our system of government counter-argument and education are the weapons available to expose these matters, not abridgement of the right of free speech and assembly." *Wood* v. *Georgia,* 370 U. S. 375.

5. The Louisiana Statute violates the Freedom of Association guaranteed by the Due Process Clause of the Fourteenth Amendment.

Enactment and attempted enforcement of this statute by Louisiana is merely another in the many recent attempts to utilize the legislative power of certain of the Southern

states to hamper, restrict and outlaw associations of Negro and white citizens joined together for the purpose of seeking implementation of the Equal Protection Clause and enforcement of the voting guarantees of the Fifteenth Amendment. In each of these cases this Court has repeatedly resisted these efforts to interfere with the constitutionally protected right of freedom of association. *NAACP* v. *Alabama*, 377 U. S. 288; *Gibson* v. *Florida Legislative Investigating Committee*, 372 U. S. 539; *Louisiana* v. *NAACP*, 366 U. S. 293; *Shelton* v. *Tucker*, 364 U. S. 479; *Bates* v. *City of Little Rock*, 361 U. S. 516; *NAACP* v. *Alabama*, 357 U. S. 449.

Time and again this Court has emphatically stated that these attempts run counter to fundamental Constitutional rights. In *NAACP* v. *Alabama*, 357 U. S. 449, the Court grounded its rejection of Alabama's attempts to utilize a state statute to harass a civil rights organization upon the necessity of protecting the right of freedom of association.

> "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See *Gitlow* v. *New York*, 268 U. S. 652, 666, 45 S. Ct. 625, 629, 69 L. Ed. 1138; *Palko* v. *Connecticut*, 302 U. S. 319, 324, 58 S. Ct. 149, 151, 82 L. Ed. 288; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213; *Staub* v. *City of Baxley*, 355 U. S. 313, 321, 78 S. Ct. 277, 281, 2 L. Ed. 2d 302. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *id.* at 460-1.

See *Aptheker* v. *Secretary of State*, *supra*, at p. 1664; *Brotherhood of Railway Trainmen* v. *Virginia*, 377 U. S.

1, 84 S. Ct. 1113, 1115; *NAACP* v. *Alabama*, 377 U. S. 288, 307-8.

In *Gibson* v. *Florida*, *supra*, at 543-4 once again the Court rejected an effort by the State of Florida to harass and intimidate an association seeking implementation of the Equal Protection Clause:

> "This Court has repeatedly held that rights of association are within the ambit of the constitutional protections afforded by the First and Fourteenth Amendments. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488; *Bates* v. *Little Rock*, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480; *Shelton* v. *Tucker*, 364 U. S. 479, 8 S. Ct. 247, 5 L. Ed. 2d 231; *N.A.A.C.P.* v. *Button*, 371 U. S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405. And it is equally clear that the guarantee encompasses protection of privacy of association in organization such as that of which the petitioner is president; indeed, in both the *Bates* and *Alabama* cases, *supra*, this Court held N.A.A.C.P. membership lists of the very type here in question to be beyond the States' power of discovery in the circumstances there presented."

And in *Louisiana* v. *NAACP*, *supra*, in striking down a provision of the statute now under review this Court restated its determination to protect the constitutional right to freedom of association from Southern legislative assault:

> "We deal with a constitutional right, since freedom of association is included in the bundle of First Amendment rights made applicable to the States by the Due Process Clause of the Fourteenth Amendment. Id., 357 U. S. at page 460, 78 S. Ct. at page 1171; *Bates* v. *City of Little Rock*, 361 U. S. 516, 523, 80 S. Ct. 412, 416, 4 L. Ed. 2d 480. And where it is shown, as it was in *N.A.A.C.P.* v. *State of Alabama*, *supra*, 357 U. S. 462-463, 78 S. Ct. 1171-1172, that disclosure of membership lists results in reprisals against and hostility to the members, disclosure is not required. And see *Bates* v. *City of*

Little Rock, supra, 361 U. S. 523-524, 80 S. Ct. 416-417." *Louisiana* v. *N.A.A.C.P.* at 297.

The present statute in its entirety is a naked attempt to restrict and inhibit freedom of association. The statute on its face patently violates the principles established by this Court protecting the right of association. Any attempted enforcement, for example, of Section 360, the "registration requirement" or 364(7), the penal section for failing to register, would run afoul of these uniform decisions.

The forcible disclosure of membership in the Southern Conference Educational Fund, for example, or the National Association for the Advancement of Colored People, or the Congress of Racial Equality or the Student Non-Violent Coordinating Committee, all of which might well be required by Section 360 of the statute, would patently violate the guiding principles established by this Court to protect freedom of association. Sections 385 and 386 of the Louisiana statute presently before the Court have already been held to be patently unconstitutional as violative of the right of association. See *Louisiana* v. *NAACP, supra.* The entire statutory scheme now here for review is just as clearly an effort to "stifle, penalize or curb the exercise of First Amendment rights", *Louisiana* v. *NAACP, supra,* at p. 297 and an effort to curtail, if not eliminate, the constitutional right of freedom of association.

The Louisiana statute, and in particular those criminal provisions which the state now seeks to enforce against these appellants and other members of civil rights organizations are simply efforts to require the disclosure of membership in organizations which will result in "reprisals against and hostility to the members." *NAACP* v. *Alabama, supra,* at p. 463; *Bates* v. *City of Little Rock, supra,* at p. 524. Cloaking the demand for exposure of membership in civil rights organizations under the guise of combatting subversion cannot escape the constitutional pro-

hibition. As this Court said in *Bates* v. *Little Rock*, "freedoms such as these are protected not only against heavy-handed frontal attack but also from being stifled by more subtle governmental interference." The utilization of "anti-subversive" legislation to force the disclosure of membership in civil rights organizations may appear more sophisticated than the naked demand for names, but as this Court pointed out once before to the State of Louisiana, "measures no matter how sophisticated, cannot be employed in purpose or in effect to curb the exercise of First Amendment rights." *Louisiana* v. *NAACP*, *supra*, at p. 297.

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The total effect of the incredibly broad dragnet character of the Louisiana statutory provisions, the built-in presumptions of guilt, the sweeping proscriptions against membership in organizations and the possession of books and literature, is to erect a powerfully effective deterrent against the exercise of the most elementary rights of press, speech, assembly and free association. Cf. *Baggett* v. *Bullitt*, *supra*; *Aptheker* v. *Secretary of State*, *supra*; *New York Times* v. *Sullivan*, *supra*; *NAACP* v. *Button*, *supra*; *Herndon* v. *Lowry*, *supra*; *Thornhill* v. *Alabama*, 310 U. S. 88.

Statutory prior restraints on freedom of expression which have been repudiated here in the past have normally been directed against a particular form of First Amendment expression. *Cf. Bantam Books* v. *Sullivan*, 372 U. S. 58; *Smith* v. *California*, 361 U. S. 147; *Near* v. *Minnesota*, 283 U. S. 697; *Lowell* v. *Griffin*, 303 U. S. 444; *Cantwell* v. *Conn.*, 310 U. S. 296. This statute places a gigantic prior restraint upon the exercise of all First Amendment liberties. It has no place in our constitutional scheme. "The safeguarding of these rights to the end that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion, is essential to free government" *Thornhill* v. *Alabama*, *supra*, at 95.

POINT II

The Louisiana anti-subversive laws have been superseded by federal legislation.

The Louisiana "Subversive Activities and Control Law", R. S. Title 14, § 358 *et seq.* and "Communist Propaganda Control Act", R. S. Title 14 § 390.1 *et seq.* have been totally superseded by a full panoply of federal legislation. Principal among the federal statutes superseding these state enactments are the Smith Act of 1940, as amended in 1948, 18 U. S. C. 2385, the Internal Security Act of 1950, 50 U. S. C. 761 *et seq.*, and the Communist Control Act of 1954, 50 U. S. C. 841. Under the decision of this Court in *Commonwealth of Pennsylvania* v. *Nelson*, 350 U. S. 497, 76 S. Ct. 477, the Louisiana statutes here under consideration have been clearly superseded and may not be enforced under the impact of the Supremacy Clause.

Although the majority of the three-judge court refused to meet the constitutional challenge to the statutes, they discuss supersession at some length concluding that the validity of the state laws can be sustained under this Court's opinion in *Uphaus* v. *Wyman*, 360 U. S. 72, R. 71. Judge Wisdom, dissenting, finds that *Uphaus* does not overrule *Nelson* and concludes that the Louisiana statutes are clearly superseded. R. 95-101.

Nelson established three tests to indicate Congressional intention to preempt a field of legislation. Under each of these criteria the conclusion is inescapable that the Louisiana anti-subversion laws have been superseded. These criteria are as follows:

(1) The scheme of federal regulation is so pervasive that it can reasonably be inferred that Congress left no room for the states to legislate;

(2) The state statutes deal exclusively with an area in which the national interest is so dominant that

the federal system must be assumed to preclude enforcement of state laws on the same subject; and

(3) Enforcement of the state laws present a serious danger of conflict with the administration of the federal program. *Pennsylvania* v. *Nelson, supra*, at pp. 502, 504, 505.

There can be little debate that under *Nelson* the Louisiana statutes are superseded and suspended. However, the majority of the lower court reads *Uphaus* as virtually overruling *Nelson*. But every consideration which led this Court in 1956 to enunciate the guiding principles of *Nelson* are equally present today. The broad sweep which the majority below would give to *Uphaus* not only disregards the serious factors which led the Court in *Nelson* to enforce the Supremacy Clause in striking down the Pennsylvania statute, but, as Judge Wisdom points out in his dissenting opinion, "offers great prospects for disguising unlawful state action against federally protected rights" R. 96.

At a moment when certain states are increasingly turning to sedition prosecutions as a means "for disguising unlawful state action against federally protected rights", R. 96, the principles which were enunciated in *Nelson* assume new vitality. They may not be undermined by a reading of *Uphaus* which would sanction state prosecutive action in areas clearly preempted by the national government.[29]

(a) The applicability of the *Nelson* tests to the present legislation.

The considerations which led the Court in *Nelson* to conclude that the Congress had there intended to preempt the field apply, we suggest, with even greater force to the impact of the Internal Security Act and the Communist

[29] We discuss later the impact of this Court's decision in *Baggett* v. *Bullitt, supra*, upon *Uphaus*.

Control Act upon the Louisiana legislation here involved. Recognizing that there is "no one crystal clear distinctly marked formula" for determining when a federal statute has preemptly occupied a field, the Court tested supersession by several criteria. *Nelson, supra* at page 502. Each of these "tests of supersession" are directly applicable to the Lousiana statutes now before the Court.

1. As in *Nelson,* the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. *Commonwealth* v. *Nelson, supra,* at page 502; *Rice* v. *Santa Fe Elevator Corporation,* 331 U. S. 218, 230. In *Nelson* the Court examined carefully the complex of federal anti-subversive legislation and found that:

> "* * * the conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it."

Commonwealth v. *Nelson, supra,* at page 504. See, also, *Garner* v. *Teamsters Union, AFL,* 346 U. S. 485; *Rice* v. *Santa Fe Elevator Corp., supra; Cloverleaf* v. *Patterson,* 315 U. S. 148; *Pennsylvania R. R.* v. *Public Safety Commission,* 250 U. S. 566; *Bethlehem Steel Corp.* v. *New York Labor Board,* 330 U. S. 767.[30]

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[30] The Court's analysis of the existing federal legislation in *Nelson* is directly applicable to the present situation.

> "The Congress determined in 1940 that it was necessary for it to re-enter the field of anti-subversive legislation, which had been abandoned by it in 1921. In that year, it enacted the Smith Act which proscribes advocacy of the overthrow of any government—federal, state or local—by force and violence and organization of and knowing membership in a group which so advocates. Conspiracy to commit any of these acts is punishable under the general criminal conspiracy provisions in 18 U.S.C. § 371, 18 U.S.C.A. § 371. The Internal Security Act of 1950

The conclusions in 1954 of the *Nelson* Court in respect to congressional occupation of the field are, if anything, even more persuasive today. It has become increasingly clear that when to the Smith Act is added the regulatory and prohibitory scheme of the Internal Security Act and the Communist Control Act, a total occupation of the field has occurred. The Internal Security Act is an elaborate registration statute demanding the services of a special administrative body and its constitutionality on its face has been upheld in *Communist Party* v. *Subversive Activities Control Board, supra,* by a divided Court.

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is aimed more directly at Communist organizations. It distinguishes between 'Communist-action organizations' and 'Communist-front organizations,' requiring such organizations to register and to file annual reports with the Attorney-General giving complete details as to their officers and funds. Members of Communist-action organizations who have not been registered by their organization must register as individuals. Failure to register in accordance with the requirements of Sections 786-787 is punishable by a fine of not more than $10,000 for an offending organization and by a fine of not more than $10,000 or imprisonment for not more than five years or both for an individual offender—each day of failure to register constituting a separate offense. And the Act imposes certain sanctions upon both 'action' and 'front' organizations and their members. The Communist Control Act of 1954 declares 'that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States' and that 'its role as the agency of a hostile foreign power renders its existence a clear, present and continuing danger to the security of the United State.' It also contains a legislative finding that the Communist' Party is a "'Communist-action' organization" within the meaning of the Internal Security Act of 1950 and provides that 'knowing' members of the Communist Party are 'subject to all the provisions and penalties' of that Act. It furthermore sets up a new classification of 'Communist-infiltrated organizations' and provides for the imposition of sanctions against them."

Commonwealth v. *Nelson, supra,* at pages 503-504.

The Communist Control Act of 1954 extends the regulatory and prohibitory operation of the Internal Security Act, and in *Scales* v. *United States*, 367 U. S. 203, a divided Court upheld the constitutionality of the membership provisions of the Smith Act. Prosecutions are presently pending against certain individuals for failing to register as members of the Communist Party under the Internal Security Act, and this Court has laid down a detailed series of guide posts for prosecutions under the membership clause of the Smith Act. *Scales* v. *United States, supra.*

Ten years after *Nelson*, the conclusion remains inescapable that the Congressional scheme of regulation is so pervasive as to make reasonable the inference that Congress has left no room for the states to supplement it. *Commonwealth* v. *Nelson, supra,* at p. 504.

2. The second test invoked in *Nelson* was that the statutes involved touched a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. *Commonwealth* v. *Nelson,* at page 504; *Rice* v. *Santa Fe Elevator Corporation,* at page 238; *Hines* v. *Davidowitz,* 312 U. S. 52.[31]

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[31] Applying this test the Court in *Nelson* described the dominant federal interest there invoked in the following way:

> "Congress has devised an all-embracing program for resistance to the various forms of totalitarian aggression. Our external defenses have been strengthened, and a plan to protect against internal subversion has been made by it. It has appropriated vast sums, not only for our own protection, but also to strengthen freedom throughout the world. It has charged the Federal Bureau of Investigation and the Central Intelligence Agency with responsibility for intelligence concerning Communist seditious activities against our Government, and has denominated such activities as part of a world conspiracy. It accordingly proscribed sedition against all government in the nation—nation-

As in *Nelson,* the federal statutes primarily involved here—the Internal Security Act and the Communist Control Act—represent Congressional action in an area of paramount national concern: *Hines* v. *Davidowitz, supra; Rice* v. *Santa Fe Elevator Corp., supra.* In these federal statutes, Congress has specifically based its legislation upon powers constitutionally delegated to the national government. The federal statutes rest, in the first instance, upon the express duties laid upon the federal Congress to provide for the common defense,[32] the exclusive responsibility of the national government in the general field of foreign affairs,[33] the obligation imposed by the Constitution upon the national government to guarantee to every state in the Union a republican form of government,[34] and the fundamental duty and obligation of the federal authorities to preserve the sovereignty of the United States as an independent nation.[35] Thus in enacting the Internal Security Act Congress specifically stated:

> "The Communist organization in the United States * * * and the nature and control of the world communist movement * * * make it necessary that Congress, *in order to provide for the common defense,* to *preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government,* enact appropriate legislation recognizing the existence of

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al, state and local. Congress declared that these steps were taken to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government * * *."

[32] United States Constitution, Article I, § 8, Clause 1.

[33] See *Hines* v. *Davidowitz, supra; Henderson* v. *Mayor of New York,* 92 U. S. 259; *People* v. *Compagnie Generale Transatlantique,* 107 U. S. 59; the *Chinese Exclusion Cases,* 130 U. S. 581.

[34] United States Constitution, Article IV, § 4.

[35] Cf. *Dennis* v. *United States,* 341 U. S. 494.

such world wide conspiracy and designed to prevent it from accomplishing its purposes in the United States." 50 U. S. C. 781 [emphasis added].

Here, in far more express language than in the Smith Act, Congress has based its legislation upon powers delegated by the Constitution to the federal government in areas of the most paramount national concern.

Where Congress has exercised such powers there is a presumption of Congressional intention to preempt the area. *Hines* v. *Davidowitz, supra; Rice* v. *Santa Fe Elevator Corp., supra.* In such situations it is not even necessary to demonstrate an actual conflict with or repugnancy to the federal legislation. *Hines* v. *Davidowitz, supra; Rice* v. *Santa Fe Elevator Corp., supra.*

In the statute presently before the Court Louisiana does not seek to camouflage its intention to intrude into fields of paramount national concern. It states its intention quite frankly. In both 14:358 and 14:390, the two statutory preambles, the necessity for providing for the common defense, the regulation of affairs between the United States and foreign nations, the preservation of the sovereignty of the United States, the guarantee to the states of a republican form of government, are all invoked as sources of authority for the state legislation.

But the states of the Union are not separate sovereign powers. The needs of the common defense, the regulation of foreign affairs, the duty to preserve the sovereignty of the nation and to guarantee to states the republican form of government are areas of paramount, if not exclusive, national concern. Cf. *Hines* v. *Davidowitz, supra.*

If the preambles to the state legislation leave any doubt whatsoever as to their validity under the Supremacy Clause the scheme of the statute reveals the state's total preoccupation with the problems and area already preempted by federal legislation. *Hines* v. *Davidowitz, supra,* is par-

ticularly instructive in this respect. In *Hines* this Court affirmed an injunction issued by a three-judge district court restraining the enforcement of an alien registration act adopted by Pennsylvania. The Court in an opinion by Mr. Justice Black, examined the state statute in light of the later enacted Federal Alien Registration Act, 8 U. S. C. 451 *et seq.*.

As in *Hines,* Louisiana, like Pennsylvania, is attempting to intrude into the "general field" of foreign affairs and national defense, areas in which "the supremacy of the national power" is more than apparent. These are areas "so intimately blended and entwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, 'the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it." *Hines, supra,* at page 66, restating the opinion of Court in *Gibbons* v. *Ogden,* 9 Wheat. 1, 211. Where Congress has acted in fields of such unquestioned national concern the presumption is overwhelming that Congress has preempted the area of legislation and the enforcement of state laws on the same subject is precluded. *Commonwealth* v. *Nelson; Rice* v. *Santa Fe Elevator Corp.; Hines* v. *Davidowitz,* all *supra.*

3. The third test applied by the Court in *Nelson* was whether the enforcement of the state laws presented "a serious danger of conflict with the administration of the federal program." The importance of the test, central to the constitutional inquiry was stressed in *Hines* v. *Davidowitz, supra.* The Court there pointed out that "our primary function is to determine whether under the circumstances of this particular case Pennsylvania's law stood as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." 312 U. S. at page 67. In *Nelson* the Court points out in some detail that the purpose of the overall program of congressional federal

enactments in this field is to attempt to guarantee "uniform enforcement" of the overall federal program. The Court quotes extensively from federal officials, including the President of the United States and the Director of the Federal Bureau of Investigation. *Commonwealth* v. *Nelson*, at pages 506, 507, 508, 509. Based upon this firmly expressed national policy the Court concluded that the penal enforcement of state Acts "would conflict with the operation of the federal plan".[36]

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[36] The discussion of the Court in *Nelson* on this point is especially appropriate here:

> "* * * enforcement of state sedition acts represents a serious danger of conflict with the administration of the Federal program. Since 1939, in order to avoid a hampering of uniform enforcement of its program by sporadic local prosecutions, the Federal government has urged local authorities not to intervene in such matters, but to turn over to the federal authorities immediately and unevaluated all information concerning subversive activities."
>
> [Quoting a public statement from President Roosevelt]
>
> "This task [handling espionage-subversion] must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility."
>
> [Quoting J. Edgar Hoover]
>
> "* * * meeting the spy, the saboteur and the subverter is a problem that must be handled on a nation-wide basis. An isolated incident in the middle-west may be of little significance, but when fitted into a national pattern of similar incidents, it may lead to an important revelation of subversive activity. * * * It is unfortunate that in a few States efforts have been made by individuals not fully acquainted with the far-flung ramifications of this problem to interject superstructures of agencies between local law enforcement and the FBI."

Cf. this discussion of the Court in *Nelson* to the statements of the Louisiana Joint Committee at the time of the raids in October to the effect that they refused to coordinate their activity under this statute with the Federal Bureau of Investigation because "We know that if we told the FBI about this raid, they would have to tell Bobby Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King." R. 26, 27 [Appellants Offer of Proof in Court below].

The conclusion of the Court in 1954 applies with even greater cogency today. Here, as in *Hines*, where the Federal Government, in the exercise of its supreme authority in this field, has enacted a complete scheme of legislation * * * states cannot * * * conflict or interfere with, curtail or compliment, the federal law, or enforce additional or auxiliary regulations." Cf. *Nielsen* v. *Johnson*, 279 U. S. 47; *International Shoe Co.* v. *Pinkus*, 278 U. S. 261.

In the present situation Congress has enacted a "complete scheme" of legislation and proscription which in broad outline the state has attempted to duplicate. The federal legislation establishes a system of registration of allegedly subversive organizations. The state likewise establishes a system of registration of allegedly subversive organizations. The federal government proscribes in great detail membership in certain communist or subversive organizations.[37]

The state statute on its part attempts to proscribe precisely the same conduct. The main punitive thrust of the state statute is punishment for membership in generally the same organizations proscribed by the federal statutes. Perhaps the sharpest indication of the open invasion of the

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[37] See, for example, the provisions of the Communist Control Act providing "whoever knowingly * * * becomes a member * * * of any organization having for its purpose and objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States or the Government of any state or political subdivision thereof, by the use of force or violence * * * shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended, as a member of a 'Communist-action' organization," 50 U. S. C. 843, as well as the provisions of the Internal Security Act penalizing membership in proscribed organizations, 50 U. S. C. 783, 50 U. S. C. 794(c), and the provisions of the Smith Act, 18 U. S. C. 2385 proscribing membership in any "society, group or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government (the Government of the United States or the government of any state, territory, district) by force or violence."

federally preempted area is the reliance by the state upon organs of federal authority in determining which organizations the state seeks to proscribe. Thus in its principal definition of proscribed organizations, 14:359 and 14:390.1, the state relies for "presumptive evidence of the factual status" of any proscribed organization upon the fact that such organizations have been "officially cited or identified" by "the Attorney General of the United States, or any committee or sub-committee of the United States Congress".

Nothing could more bluntly indicate the intention of the state to enact laws designed to intrude in fields primarily within federal competence. The attempt of the state to create punitive sanctions for designations by federal agencies obviously "conflicts" and "interferes" with the purpose of Congress. Recognizing the strict requirements of the Due Process Clause, Congress has refrained from imposing criminal sanctions upon merely ex-parte designations of organizations as "subversive" or "Communist". Instead it has set up a carefully constructed machinery in the Internal Security Act for the adjudication of this question together with a full opportunity for judicial review. See 50 U. S. C. 792, 793. Cf. *Joint Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123.

Here, however, with total disregard for both the intent of Congress and the mandate of the Constitution, Louisiana has attempted to impose criminal sanctions upon designations by Congressional Committees which the Congress, itself, has declined to impose. Nothing could indicate more sharply the necessity for the enforcement of the Supremacy Clause in this area. These state statutes are expressly designed to enforce designations made by federal agencies based upon federal laws in areas of federal supremacy in a manner contrary to federal statutes.

In the Internal Security Act and the Communist Control Act, Congress has attempted to devise an overall

scheme of regulation which, in the words of *Nelson*, "purports to protect fundamental rights by appropriate definitions, standards of proof and orderly procedures in keeping with the avowed congressional purpose 'to protect' freedom from those who would destroy it, without infringing upon the freedom of all our people.'" *Nelson*, at page 508.

Where federal laws contain deliberate safeguards for the protection of individual liberty and these congressional safeguards would be nullified if the state were allowed to proceed, Congress will not be presumed to have intended such a result. *Hines* v. *Davidowitz, supra*, at page 74. As Mr. Justice Black pointed out in *Hines*, this is of particular importance where the "legislation deals with the rights, liberties and personal freedoms of human beings, and is in an entirely different category from state tax statutes, or state pure food laws, regulating the labels on cans." 312 U. S. at page 68. The Internal Security Act, upheld by a sharply divided Court, see *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1, provides for a careful system of adjudication, including full opportunities for judicial review prior to the institution of criminal proceedings based upon any designation of an organization as "Communist". It is perfectly clear from the majority opinion in *Communist Party* v. *Subversive Activities Control Board, supra*, that if the federal statut had not expressed a congressional concern to comply with the requirements of the Due Process Clause the law would not have survived the constitutional attack.

On the other hand, the Louisiana statute ignores any safeguards for the protection of individual liberty which the federal laws have attempted to erect, thus obstructing the clearly expressed congressional purpose. See Point I, *supra*.

The Louisiana statute would permit wholesale criminal prosecutions of individuals for wholly peaceful associations

and expressions of social and political opinions based upon *ex parte* non-judicial characterizations of organizations by Congressional Committees. In the present appeals the prosecutions rest upon years old, unilateral charges by the House and Senate Committees.[38]

Even where the membership charge would be based upon designations by the Federal Subversive Activities Control Board, the criminal penalties and enforcement procedures are in clear conflict with the Federal statute.

In this respect the state law clearly runs contrary to the congressional purpose by imposing a series of additional penalties for offenses for which Congress has already provided a single set of penalties. *Jerome* v. *United States,* 318 U. S. 101, 105; *Houston* v. *Moore,* 18 U. S. (5 Wheat.) 1, 25. Both 14:358 *et seq.* and 14:390.1 *et seq.* provide penalties up to ten years of imprisonment and fines of $10,000. for acts which have already been penalized by the federal legislation. As Mr. Justice Washington in *Houston* v. *Moore* stated, this is "something very much like oppression, if not worse".

But perhaps the most striking illustration of the manner in which enforcement of the Louisiana statute would obstruct and interfere with national policy is evidenced by the threatened prosecutions of appellants. Americans may freely associate with one another with the objective of striving to achieve the equality guaranteed to Negro and white alike by the Fourteenth Amendment. *NAACP* v. *Alabama; NAACP* v. *Button; Bates* v. *Little Rock; Louisiana ex rel. NAACP* v. *Gremillion,* and cases cited *supra.* But as we have discussed previously the immediate history of the attempted enforcement of these laws leaves little

[38] The indictment of appellants rests upon a Report of the House Committee on Un-American Activities, June 16, 1947, a Report of the Senate Internal Security Subcommittee, March 18-20, 1954, and a Report of the House Committee on Un-American Activities, February 16, 1959.

doubt as to the purpose of the state authorities in attempting to circumvent this national policy. See Point I, *supra*.

The long history of the opposition of state authorities in Louisiana to the implementation of the enforcement of the Equal Protection Clause is well known to the federal courts. *See Bush* v. *Orleans Parish School Board*, 188 F. Supp. 196, and companion cases. The threatened use of this Louisiana statute against individuals and organizations seeking to enforce the constitutional guarantees of equality and the elimination of racial segregation runs contrary to the highest expressions of national policy and concern.

This appeal presents in the most aggravated form the problems which the Court in *Nelson* saw as flowing from the enforcement of state laws which conflict with the operation of a federal plan. Here the enforcement of the state statute would not only sanction a disregard for the deliberate safeguards for the protection of individual liberty contained in the federal statutes, but would permit the use of these statutes to frustrate the enforcement of a primary national objective—the full implementation of the Equal Protection Clause of the Fourteenth Amendment. The highest policy considerations call for the enforcement of the Supremacy Clause and the suspension of this state statute.

(b) The Louisiana Statute is superseded by federal legislation under the "same conduct" test of *Uphaus*.

Under any of the tests enunciated in *Nelson* the Louisiana statutes here under attack must fall as superseded by federal legislation.[39] But even when the *Nelson* opinion is posed in its most confined terms the test formulated

[39] As with any other landmark decision of the Court there has been considerable discussion both in the cases and the commentaries as to the sweep of the decision. See, for example, *Uphaus* v. *Wyman*, 360 U. S. 72, 79 S. Ct. 1040; Cramton, *Supreme Court and State Power to Deal with Subversion*, 43 Minn. L. R. 1025.

strikes down the Louisiana statutes as superseded. In *Uphaus* v. *Wyman*, 360 U. S. 72, Mr. Justice Clark for the then majority of the Court restated the holding in *Nelson* in the following manner:

> "In Nelson itself we said that the 'precise holding of the Court * * * is that the Smith Act * * * supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the *same conduct.*'" (Italics supplied by Mr. Justice Clark.) *id.* at 76.

Applying this formulation of the breadth of *Nelson* the Louisiana statutes must fall as superseded since in the most deliberate manner the state legislature has attempted to proscribe the "same conduct" as Congress did in the Smith Act, the Internal Security Act and the Communist Control Act.

An examination of Title 14 R. S. 358 *et seq.*, the Subversive Activities and Communist Control Law, and 14 R. S. 390.1 *et seq.*, the Communist Propaganda Control Law reveals beyond any dispute that these state laws were designed to "proscribe the same conduct" as the overall complex of federal legislation. This is no accident. The Louisiana statutes were expressly enacted to attempt to meet the same problems and to legislate in the exact area covered by the federal statutes.

A reading of the preambles to the state legislation is revealing. 14:358 openly proclaims that the purpose of the legislation is to seek to meet problems created by the "world Communist movement." Thus, the preamble declares, "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites which has as its objective world control." After describing in some detail the conduct of this "world Communist movement" which the state seeks to proscribe, the legislature concludes that "the world Communist movement constitutes a clear and present danger to the citizens

of the State of Louisiana. The public good and the general welfare of the citizens of this state require the immediate enactment of this measure."

But this is precisely the "conduct" which Congress has proscribed in the federal legislation. The preamble to the Internal Security Act, Title 50, Sec. 781, in almost the identical language utilized by the Louisiana legislature states that the purpose of the federal legislature is likewise to meet the problems of "conduct" engendered by the "world Communist movement." This "conduct" is defined again in almost precisely the same terms as the state statute. The Louisiana legislature has not hesitated to concede that it is addressing itself to the exact area of problems and conduct regulated and proscribed by the federal statutes. The preambles to both of the Louisiana statutes make it perfectly clear that the stated purpose of the state statutes is an effort to control and proscribe the conduct and effect of the "world Communist movement."

The "world Communist movement" is, in the words of the Louisiana legislators, the clear and present danger which "requires the immediate enactment of this measure". Louisiana is not here concerned with subversion which is directed solely to the state. Cf. *Uphaus* v. *Wyman, supra.* Quite to the contrary, the legislature is here concerned only with "conduct" of a national and international character. It is perfectly clear that the legislature is not attempting to deal with purely local problems conceivably within its competence, but rather with the national and international phenomena which are the express and stated concern of the federal legislation.

The Louisiana legislature leaves nothing to the imagination. Thus in 14:358 the legislature explains the state's concern with the conduct proscribed in the state statute by pointing out that,

> "Since the State of Louisiana is the location of many of the nation's most vital military establish-

> ments, and since it is a producer of many of the most essential products for national defense, the State of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in immediate danger of Communist espionage, infiltration and sabotage."

Thus the state legislature concedes that its concern is with threats to the national interest and national security, with problems relating to the national defense and, indeed, to the area of the relationships between nations. It is the presence in Louisiana of the nation's "most vital military establishments" that creates, in the opinion of the legislature, the possibility of "conduct" it seeks to proscribe. It is the fact that there are located in this area producers of "many of the most essential products for national defense" which creates the statutory concern. But these are precisely the areas of Congressional regulation and proscription in the superseding federal legislation.

This is not a situation in which it is necessary to infer from the objective conduct proscribed an intention to intrude upon areas clearly and obviously preempted by the federal government. Cf. *Hines* v. *Davidowitz, supra.* Here, we are told by the state legislature itself, that its intention is avowedly to intrude into the federal area. Here the state legislature does not camouflage its design as a concern with "purely local state problems". Cf. *Uphaus.* Here the state legislature has not attempted to avoid references to national concerns. Louisiana openly concedes that it is legislating in areas of highest federal concern, and that it is attempting to proscribe conduct already regulated and proscribed in the greatest detail by existing federal statutes. Probably there has never been a situation in which state intention to intrude into an area preempted to the federal government has been more openly manifested. It could not be clearer that under the tests enunciated in both *Nelson* and *Uphaus* the Louisiana statute is patently violative of the Supremacy Clause and may not be enforced.

But the majority of the District Court would read *Uphaus* as if it has overruled *Nelson*. The majority below sees *Uphaus* as a license to engage in semantic magic. Conduct specifically covered by federal legislation is removed from the preempted area by the affixation of a label bearing the inscription "this is directed at the state alone". But constitutional prohibitions may not be avoided by convenient labels. *New York Times* v. *Sullivan; Aptheker* v. *Secretary of State, supra.*

Uphaus is not an open invitation to disregard *Nelson*. The opinion of the majority of the Court in *Uphaus* is careful to reaffirm and restate the "precise holding" of *Nelson*. *Uphaus* at page 76. And as we have discussed here the "same conduct" test of *Uphaus* clearly strikes down state legislation and prosecutive activities directed at "conduct" already proscribed by federal legislation.

Uphaus as Judge Wisdom indicates in his dissenting opinion below is restricted by its own terms to conduct solely directed against a state itself. Thus it is conceivable that "riots, malicious mischief, * * * or a conspiracy to dynamite the State house", R. 96, unrelated to conduct already proscribed by federal legislation, may under *Uphaus* be the basis for state legislation. That *Uphaus* must be strictly confined to such local behavior totally unrelated to activities which fall within the wide arena of conduct covered by the federal regulatory scheme is further evidenced by the serious undermining of whatever authority the case may have had by the decision of this Court this June in *Baggett* v. *Bullitt, supra.*

The decision of the Court in *Baggett* has in effect overruled *Uphaus*. In *Uphaus* the statutory authority for the legislative inquiries made by the State Attorney-General, the subject of the litigation before the Court, was the New Hampshire Subversive Activities Act, N. H. Rev. Stat. Ann. (c. 588, Sect. 1-16), 1955. The majority predicated its assumption that the legislative inquiries were

relevant upon the existence of the Subversive Activities Act. But the New Hampshire Act is almost word for word the Washington Statute struck down as unconstitutionally vague by the Court this June in *Baggett*.[40] Whatever impact *Uphaus* may have had upon the question of the reserved powers of a state to legislate or investigate in the area of "subversive" activities is now seriously undermined by the fact that the Court has held that state statutes of the New Hampshire type are void as unconstitutional.[41] See *Baggett, supra.*

Any limitations *Uphaus* may have suggested upon the teachings of *Nelson* must now be viewed in light of the impact of *Baggett*[40] upon the very basis for the *Uphaus* opinion. But beyond this it is increasingly clear that the fundamental policy evaluations underlying the conclusion of the Court in *Nelson* have been reinforced and vindicated in the decade following the decision.[42]

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[40] See Point I, *supra.*

[41] It is of some interest that the dissenting Justices in *Uphaus*, Mr. Justice Brennan, joined by the Chief Justice, Mr. Justice Douglas and Mr. Justice Black, raise questions concerning the constitutionality of the New Hampshire statute in terms which presage the present majority opinion in *Baggett*.

> "The Legislature had passed a broad and comprehensive statute, which included criminal sanctions. That statute was, to say the least, readily susceptible of many applications in which it might enter a constitutional danger zone. See *Yates* v. *United States*, 354 U. S. 298. * * * Therefore, indictment would be fraught with constitutional and evidentiary problems of an obvious and hardly subtle nature." *Uphaus* at p. 99.

[42] See Louis H. Pollak, *The Supreme Court and the States* (Reflections on *Boynton* v. *Virginia*, 49 Cal. L. R. 15 (1961)):

> "But the Court can also be right—as it was, to take a non-commerce case, when, in *Pennsylvania* v. *Nelson*, Chief Justice Warren sustained the Pennsylvania Supreme Court in barring the conviction, under Pennsylvania's anti-sedition laws, of one

(c) The state courts have consistently applied the rule of *Nelson* as prohibiting state criminal prosecutions for sedition based upon charges of communist activity.

The present vitality of *Nelson* is further evidenced by the fact that in the years following the decision not a single state court criminal prosecution for alleged communist activity has been sustained. See, for example, *Commonwealth* v. *Gilbert*, 334 Mass. 71, 1956; *Braden* v. *Commonwealth*, 291 S. W. 2d 843 (Kentucky); *Commonwealth* v. *Hood*, 334 Mass. 76; *Commonwealth* v. *Dolsen*, 183 Pa. Sup. 339. These cases dealt with attempted enforcement of state sedition acts based upon charges that the defendants were engaged in communist activities or were members of communist organizations. Even where the charge was carefully couched in terms of sedition against the state itself, in applying the doctrines enunciated in *Nelson* the state courts uniformly pointed out that charges of communist activity of necessity involved conduct proscribed by the federal legislation. Thus, for example, the Supreme Court of Massachusetts, in *Commonwealth* v. *Gilbert*, *supra*, at 74-5 pointed out:

> "Although all these things * * * are specified as pertaining to the overthrow of the government of this Commonwealth, it is evident that they are the familiar paraphernalia of communist agitation for the overthrow of government in general, and cannot be

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accused of sedition against the United States. Putting aside the know-nothings who have read *Nelson* as aid and comfort to communism, the criticism of *Nelson* has mainly come from those who have confined their attention to the Court's inquiry into congressional 'purpose' in the Smith Act and related legislation. If *Nelson* is treated as an attempt to determine how best to serve the dominant national interest in a field in which Congress has not spoken with any clarity, the importance of *Nelson* becomes clear. And the fact that Congress has not yet 'overruled' the Court is some evidence that the Chief Justice and his colleagues of the *Nelson* majority did not go astray in their assessment of the national interest."

directed separately and exclusively against the government of this Commonwealth."

These cases all dealt with criminal prosecutions under state sedition laws, directly superseded by the federal Smith Act.[43] Following the passage of the federal Internal Security Act several states enacted so-called "little McCarran Acts", principally among them Alabama, Louisiana, Michigan and Texas. These statutes are attempts to cover the areas governed by the Internal Security Act of 1950 and the Communist Control Act of 1954. See Fund for the Republic, *Digest of the Public Record of Communism in the United States* (1955), 241-488.[44] The Supreme

[43] Some efforts have been made in Congress to secure legislation which would revive state sedition laws. (See, *e.g.*, Hearings before the Internal Security Subcommittee of the Senate Committee on the Judiciary, 84th Cong. 2d Sess., on S. 3603 and S. 3617, May 11, 1956, entitled "Jurisdiction in Sedition Cases"; see also, Hearings before the Senate Judiciary Committee, 84th Cong. 2d Sess., on S. 373 and S. 3143, May 18, 1956, entitled "Federal-State Concurrent Jurisdiction"). None of these efforts have been successful. The failure of these congressional attempts reinforces the continued vitality of *Nelson*.

[44] State anti-subversive statutes vary widely. Alabama (Code of Alabama, Recompiled 1958, ch. 27A, 97(1)-97(8)) defines "Communists", "Communist Party" and "Communist fronts" in a manner substantially like Louisiana. Its registration statute is substantially identical with Louisiana's R. S. 14:360. See also Washington (Wash. Rev. Code 9.81 *et seq.*, invalidated by *Baggett* v. *Bullitt*, *supra*). Other states requiring registration of persons or organizations are: Arkansas (Arkansas Statutes 1947 Ann. 41:4125); Mississippi (Miss. Code 1942 Ann. 4194-01 to 4194-10: registration upon request of Secretary of State of organizations and members which have been named by Congressional committees or other federal agencies, or of organizations which have one or more officers who are officers of organizations which have been so named; Montana (Rev. Code of Montana 1947, ch. 44, 4411-27); New Mexico (New Mexico Statutes 4-15-1 to 4-15-3: registration of members of Communist Party, organizations which support "Communistic" doctrine, or advocate violent overthrow of the United States or New Mexico); South

Court of Michigan, in *Albertson* v. *Millard*, 345 Mich. 519, faced directly the impact of the preemption doctrine upon such state statutes and struck down the Michigan Act on

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Carolina (Code of Laws of South Carolina 1962, 16-581-9); Wyoming (Wyoming Stat. 9-693-9). With the exception of Mississippi and New Mexico, the organizations required to register are all either defined as advocating violent overthrow of the Federal and state (or all state) governments or which have been determined by the state legislature to have that objective.

States outlawing organizations advocating violent overthrow of the Federal and state governments, and punishing membership in such organizations, are: Alabama (Code of Ala. Recom. 1958, title 14, § 20, ¶ 4); Alaska (Alaska Stat. 11.50.020); Arkansas (Ark. Stat. 1947 Ann. 41, 4125) Delaware (Del. Code Ann. 11, § 861); Florida (Fla. Stat. Ann. tit. 44, ch. 876.02-876.22-28: membership in or "association with" group which "promotes interests of" "commmunistic" organizations); Georgia (Ga. Code Ann. 26-902a); Indiana (Burns Ind. Stat. Ann. 10-5204: punishing membership in organizations advocating overthrow or engaging in "Un-American activities"); Kansas (Gen. Stat. of Kan. (Ann.) 21-306); Maryland (Ann. Code of Md. 85A, 1-3); Michigan (Mich. Stat. Ann. 28.813: membership in organization engaging in "subversion against the state"); Mississippi (Miss. Code 1942 Ann. 4194-01 *et seq.*); Montana (Rev. Code of Mon. 1947, ch. 44, 4411-27); New Hampshire (N. H. Rev. Stat. Ann. ch. 588); New Jersey (N. J. Stat. Ann. 2A, 148:14); New Mexico (N. M. Stat. 4-15-1 to 4-15-3 "Communistic"); North Carolina (N. C. Gen. Stat. 14-11); Ohio (Ohio Rev. Code 2921.21, *et seq.*); Oklahoma (Okl. Stat. Ann. ch. 21, 1266.1 to 1266.11); Pennsylvania (Purdon's Rev. Penn. Stat. 18-3811); South Carolina (Code of Law of S. C. 1962, 16-581-9) Tennessee (Tenn. Code Ann. 39-4405); Wisconsin (Wis. Stat. Ann. 946.09); Wyoming (Wyo. Stat. 9-693-9); Virginia (Code of Va. 18.1-421: advocating overthrow by force, violence "or other unlawful means").

The following states, with statutes as cited above, have "subversive" person and organization definitions and provisions identical or substantially identical to those of Louisiana: Alabama, Florida, Georgia, Maryland, New Hampshire, Ohio and South Carolina.

the ground that it had been totally superseded by existing federal legislation.[45]

The Supreme Court of Louisiana itself has applied *Nelson* to the 1954 version of the statute presently before the Court.

In *State* v. *Jenkins*, 236 La. 300, 107 So. 2d 648, (1958) the Louisiana Court held that state prosecutions for alleged communist activity have been superseded by existing federal law. In the *Jenkins* case the defendant was charged in a bill of information with violating R. S. 14: 366-380, an earlier version of the statute presently before this Court. The defendant was alleged to be a member of the Com-

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[45] In describing the impact of the Michigan decision upon the Alabama, Louisiana and Texas statutes, a recent commentator has written:

> "These statutes provide for registration of communist and subversive organizations, set out penalties for sabotage, and impose various disabilities upon registrants, such as exclusion from the ballot and from public office. Other states require registration but do not impose disabilities upon registrants. It is probable that most of the provisions of these statutes have been superseded by federal legislation. The registration statutes duplicate and enlarge the federal registration scheme. Nearly all of them differ from the federal scheme in one or more respects. Some are accompanied by provisions outlawing the Communist Party. Because of the probable conflict of provisions, there is a much clearer case for preemption with reference to these statutes than there is with respect to the sedition statutes invalidated by the *Nelson* case. *Hines* v. *Davidowitz*, in which the Federal Alien Registration Act of 1940 was held to supersede a Pennsylvania alien registration statute, provides a close analogy. Moreover, the breadth and thoroughness of the federal scheme make it easier to infer a preemptive intent on the part of Congress. It is not surprising that the Michigan Supreme Court in *Albertson* v. *Attorney General* held that Michigan's comprehensive communist control law had been superseded by the similar provisions of federal communist control measures."

Cramton, *Supreme Court and State Power to Deal with Subversion and Loyalty*, 43 Minn. L. R. 1025, 1034.

munist Party knowing it to be a foreign subversive organization as defined in § 366 of the statute. The prosecution argued that *Nelson* merely foreclosed acts of sedition against the United States alone. The Louisiana Court rejected the prosecution's position, carefully pointing out:

> "This contention cannot be sustained. A reading of the majority opinion in the *Nelson* case leaves no doubt that the ruling covers the entire area of communist activity, since communism in any form, even though directed against a local government, necessarily violates the Smith Act. Thus, in the case at bar, the charge that the accused has been guilty of subversive activity, in that she was a member of the Communist Party, in its essence includes seditious acts against the government of the United States (even though such violation had not been specifically alleged), for our Communist Control Law (R. S. 14:358-365) like the Federal Communist Control Act, 50 U. S. C. § 841 et seq., contains legislative declarations of fact that the Communist Party is dedicated to the overthrow of all organized government." [46]

The majority of the lower court takes the position that neither *Nelson* nor *Jenkins* governs the present Louisiana statute due to the intervening decision of this Court in *Uphaus*.[47] But as we have discussed previously even if

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[46] In support of its conclusion the Louisiana Court specifically referred to and adopted the opinion of the Michigan Supreme Court in *Albertson*, *supra*, as well as the opinions of the Supreme Courts of Massachusetts and Kentucky in *Gilbert* and *Braden*, both *supra*.

> "The conclusion we reach here finds ample support in the views expressed by the highest courts of Massachusetts, Kentucky, and Michigan."

[47] The 1962 Act is an attempt to meet the decision of the Louisiana Court in *Jenkins*, *supra*. The 1962 Act is patently an effort to retain the entire substance of the 1952-54 legislation while eliminating the most overt expression of intrusion into the federal area. Thus the only substantive changes in the 1962 legislation

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Uphaus retains any vitality after *Baggett* it concedes as superseded any state legislation which proscribes the "same conduct" as that covered by federal legislation. The Louisiana Court itself has acknowledged this limitation upon state legislative power. In *State* v. *Cade*, 244 La. 534, 135 So. 2d 382 (1963), in an opinion discussing the impact of *Uphaus*, the Louisiana court restated and reaffirmed its earlier holding in *Jenkins* that "any claim of reserved state power in prosecutions for Communist activity had been foreclosed by the *Nelson* decision." *Cade* at 541.[48]

* * *

Perhaps more than any other case which has come before the Court this appeal illustrates the importance of the doctrine of preemption to the preservation of the concept of a Federal Union. Louisiana has in the enactment of these laws and in their attempted enforcement acted essentially upon the assumption that it is an independent sovereignty. Expressing dissatisfaction with the policies underlying national federal legislation it candidly seeks to legislate in

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beyond widening the definitions of "communist" organizations, Cf. 359 (1), (2) and (3) with 1952 Act, Sections 2-4, was the elimination of the words "government of the United States" wherever it appeared in the 1954 Statute. Cf. 350 (5), (6), (8), and 364 (1), (2) with 1954 Act, Section 1, paragraphs 2, 3 and 5 and Section 2 (a), (b). However an examination of the text of the statutes reveals that the 1962 Act continues to proscribe the precise conduct covered by the 1952 and 1954 statutes. Cf. *Jenkins, supra; Uphaus, supra.*

[48] In *Cade* the Louisiana court upheld an indictment for violation of the State Criminal Anarchy Law, R.S. 14:115. It distinguished its ruling in *Jenkins* on the ground that the defendant in *Cade* was not charged as in *Jenkins*, with a violation of the statutes now before the Court, R.S. 14:366 *et seq.* and R.S. 14:390.1 *et seq.*. The defendant was not charged with "communist activities," and the prosecution and statute involved in *Cade* did not "necessarily" involve conduct proscribed by federal legislation. This is to be contrasted with *Jenkins* which deals with a statute directed to the problem of "communism in any form" and therefore "in its essence includes seditious acts against the United States." *Jenkins* at p. 649.

fields frankly within the national sphere and to enforce its laws in a manner fundamentally at odds with national policies and objectives. But the several states are not independent sovereigns and the Union is not merely a "compact of states" *Cooper* v. *Aaron*, 358 U. S. 1. State statutes which intrude upon areas of paramount national concern in a manner wholly inconsistent with the highest national objectives must fall as violative of the Supremacy Clause. Otherwise in the words of Chief Justice Marshall "the Constitution itself becomes a solemn mockery" *United States* v. *Peters*, 9 U. S. 115, 136.

POINT III

The District Court had the power and duty to entertain the complaint and enjoin the enforcement of the statute.

(a) The District Court had power to entertain the complaint.

The majority of the three-judge court dismissed the complaint for failure to state a cause of action for relief. It is not entirely clear upon what basis this rests. The majority seems to believe that under some unclearly defined doctrine of "states rights" Federal district courts do not have the power to entertain a cause of action seeking injunctive relief against the type of unconstitutional state statute here involved. As Circuit Judge Wisdom commented in his dissenting opinion, "the majority's decision appears to rest on a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights" R. 85.

This refusal of the majority of the three-judge court to entertain the complaint flies in the face of principles of fundamental federal responsibility enunciated as early as *Osborn* v. *Bank of the United States*, 9 Wheat. 738,

6 L. Ed. 204 and restated authoritatively in *Ex parte Young*, 209 U. S. 123. The power of a federal district court to entertain a cause of action seeking relief from threatened enforcement of an unconstitutional state statute is not open to question. *Ex parte Young, supra; Truax* v. *Reich*, 239 U. S. 33; *Terrace* v. *Thompson*, 263 U. S. 197; *Hague* v. *CIO*, 307 U. S. 496; *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Hale* v. *Bimco Trading Co.*, 306 U. S. 375. As Judge Wisdom commented on the majority's inability to find any basis for federal jurisdiction, "There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute. We need look only to the Supremacy Clause to resolve any doubt." R. 103.

The doctrine of *Ex parte Young* underlining the power of a federal court to enjoin the enforcement of unconstitutional state laws "either of a civil or criminal nature", has been restated time and again. This Court has most recently reminded us that this fundamental power to protect "the constitutional rights of individuals from legislative destruction [is] a power recognized at least since our decision in *Marbury* v. *Madison*." *Wesberry* v. *Sanders*, 376 U. S. 1. It becomes increasingly clear that "[I]n perspective the doctrine of *Ex parte Young* seems indispensable to the establishment of constitutional government and the rule of law." Wright, Federal Courts, Sect. 48 (1963).

The lower court would negate federal jurisdiction in the face of an assertion of a state's "right to self-preservation" R. 68. However, the fact that a state may ground its threatened unconstitutional action upon an asserted right to self-preservation does not diminish the power or duty of a federal district court to entertain a complaint which seeks relief from impending unconstitutional state action. Increasingly the utilization of state statutes and

procedures to harass and impede the exercise of federally created constitutional rights is sought to be justified as a necessary means of protecting the state from subversion or destruction. See *Gibson* v. *Florida Committee, supra; NAACP* v. *Alabama, supra; Baggett* v. *Bullitt, supra; NAACP* v. *Louisiana, supra.* But the use of the label "self-preservation" no more negates the existence of federal power to protect federal rights than the imposition of any other convenient label. See *Brotherhood of Trainmen* v. *Virginia, supra; New York Times* v. *Sullivan, supra.* Time and again, state efforts to restrict First Amendment liberties are predicated upon an assumed necessity to "preserve" the state. And yet federal power to defend the Constitution does not vanish at the mere assertion of such an interest. See for example, *Cramp* v. *Florida; Baggett* v. *Bullitt; NAACP* v. *Louisiana; Herndon* v. *Lowry,* all *supra.*

If this assertion of a state's right to "self-preservation" can effectively negate the existence of federal judicial power to restrain unconstitutional state action, a new formula has been devised to replace the repudiated doctrines of interposition and nullification. See *Cooper* v. *Aaron,* 358 U. S. 1. If the opinion of the majority of the court below should be sustained, the fundamental role of the Federal district court as a forum for the protection of federally created constitutional rights will disappear. See *Reynolds* v. *Sims,* 377 U. S. 533. As the dissenting opinion of Circuit Judge Wisdom so clearly warns, should the invocation of a doctrine of "States' Rights" to justify abdication of federal judicial responsibility be tolerated, the command of the Supremacy Clause will be nullified. R. 86.

An acceptance of the doctrines of federal judicial impotence espoused by District Judges West and Ellis would result in the virtual closing down of the only meaningful judicial tribunals in the states of the deep South presently

available for the vindication of fundamental federal constitutional rights. See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. 1163 (1963). The elimination of any effective judicial forum for the prompt and decisive protection of these rights, within the context of the ever-increasing demand of Negro citizens for equality and freedom, would create a constitutional crisis of grave dimension. The absence of any tribunal of original jurisdiction prepared to enforce federal constitutional rights would threaten the fundamental assumptions underlying the national commitment to a theory of government under law which encourages and permits social progress and change to take place within the channels of peaceful democratic expression. See *Stromberg* v. *California, supra; Whitney* v. *California, supra;* concurring opinion of Mr. Justice Brandeis.

(b) The District Court had equitable jurisdiction to restrain the enforcement of the state statute.

The majority below not only would deny the existence of federal jurisdiction to entertain the complaint but would eliminate virtually any equitable jurisdiction to restrain state criminal statutes or proceedings. This assumption not only disregards the careful affirmative statements by this Court of equitable power to restrain criminal statutes or proceedings threatening immediate and irreparable injury, *Ex parte Young, supra; Doud* v. *Hodge*, 350 U. S. 485; *Traux* v. *Reich, supra; Pierce* v. *Society of Sisters*, 268 U. S. 510; *Hague* v. *CIO, supra; Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, but rejects the recent powerful restatements by the Fourth and Fifth Circuits of the necessity for the exercise of equitable power in the area of the protection of federally created civil rights. See *Jordan* v. *Hutcheson*, 323 F. 2d 597, 4th Cir. 1963; *Bush* v. *Orleans Parish School Board*, 194 F. Supp. 182, E. D. La., 1961, aff'd 367 U. S. 907; *Browder* v. *Gayle*, 147 F. Supp. 707,

M. D. Ala. 1956, aff'd *per curiam*, 352 U. S. 903; *Morrison* v. *Davis*, 252 F. 2d 102, 5th Cir. 1958; *United States* v. *Wood*, 295 F. 2d 772 (1961); *City of Houston* v. *Dobbs Co.*, 237 F. 2d 428, 5th Cir. 1956; *Denton* v. *City of Carrollton, Georgia*, 235 F. 2d 481, 5th Cir. 1956.

In the Fifth Circuit, in a series of landmark decisions from *Browder* v. *Gayle to Bailey* v. *Patterson*, both *supra*, the concept has been forcibly restated that federal equity power must be available where state criminal statutes or proceedings are being utilized to interfere with or impede the exercise of fundamental federal constitutional rights in the effort to achieve the equality guaranteed by the Fourteenth and Fifteenth Amendments. The increasing use of these statutes and proceedings as techniques to harass and deter efforts to obtain equality for Negro citizens has called forth vigorous affirmation of the existence of the necessary federal equity power to protect basic, federally created rights. See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification, supra.*[49]

Circuit Judge Wisdom has carefully restated the principles applied by the Fifth Circuit in asserting equity jurisdiction in cases involving an imminent threat to fundamental constitutional rights.

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[49] See for example, *United States* v. *Wood*, 5 Cir. 1961, 295 F. 2d 772.

A Registrar of Voters in a Mississippi county where there were no Negroes registered, without provocation pulled out his revolver and ordered a Negro to leave his office. As the latter was leaving, the Registrar struck him on the back of his head with the revolver. The Negro had conducted a school for voting registration and had encouraged Negroes to register. He was charged with disturbing the peace. The Court of Appeals for the Fifth Circuit enjoined his prosecution, not just because of the violation of his rights, but on the ground that the prosecution, "regardless of outcome, will effectively intimidate Negroes in the exercise of their right to vote." 295 F. 2d at 777. See, also, *Aelony* v. *Pace*, three-judge court, Georgia, — F. S. —, Nov. 1, 1963, 32 L. W. 2215, opinion by Chief Judge Tuttle.

"Exceptional as this situation should be, there are enough cases now, I believe, for one to state that in this circuit our courts have established the following principle: Federal courts are slow in interfering with criminal proceedings in the ordinary case; for example, to take an obvious case, when a defendant argues that state proceedings should be halted while the federal court considers the validity of a search and seizure. But when the complaint alleges that a man is about to suffer irreparable injury from the State for asserting his basic constitutional rights, federal courts are under a duty to hold a hearing on the complaint and to decide the issues. If the state law is unconstitutional as written or applied, or has been superseded by congressional legislation, the Court should enjoin the enforcement of the law, whether the statute is of a civil or a criminal nature." R. 103.

This application of equitable concepts by the Fifth Circuit to the protection of fundamental constitutional liberties reflects a deep understanding of the issues involved. This Court has pointed out again and again that the fundamental vice in unconstitutionally vague statutes is the deterrent effect such legislation has upon the exercise of basic liberties by countless thousands of citizens. See *Thornhill* v. *Alabama; NAACP* v. *Button; Cramp* v. *Florida; Baggett* v. *Bullitt; Aptheker* v. *Secretary of State,* all *supra.* The enjoining of the enforcement of proceedings under such statutes is essential not only to protect the constitutional rights of those individuals proceeded against, but primarily to remedy the deadening effect of such deterrence upon the free exercise of fundamental liberties by the citizens at large. See *Thornhill* v. *Alabama, supra.* The enjoining of the enforcement of a statute which "may inhibit the exercise of First Amendment freedoms", *Baggett* v. *Bullitt, supra,* at p. 379, is an exercise of classic equitable

power to prevent "immediate and irreparable injury".[50] See *Spielman Motor Sales Co.* v. *Dodge, supra.* Fundamental constitutional liberties are "warrants for the here and now". *Watson* v. *City of Memphis,* 373 U. S. 526. Nothing could be more "irreparable" than injury to these basic freedoms. *Whitney* v. *California,* concurring opinion, *supra.* In the most important sense of the words the injuries threatened by a statute of the character before the Court are "immediate" and "irreparable". They call insistently for federal equitable relief.

The opinion of the Court in *Douglas* v. *City of Jeannette,* 319 U. S. 157, is not a decisional hurdle in the development of this essential federal equity power. On several occasions the Fifth Circuit has sought to explain that the Court's statement that equity will not "ordinarily" restrain criminal proceedings does not refute the existence of equitable power to protect fundamental constitutional rights from immediate and irreparable injury. See *City of Houston* v. *Dobbs, supra; United States* v. *Wood, supra; Morrison* v. *Davis, supra.* Yet, as in the opinion of the majority below, *Douglas* v. *City of Jeannette* continues to be invoked by those who would restrict or eliminate the role of the federal courts in the protection of federal rights from aggressive state action. But *Douglas* v. *City of Jeannette* simply cannot be read as a general license to avoid

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[50] This is to be contrasted to such cases as *Stefanelli* v. *Minard,* 342 U. S. 117 and *Cleary* v. *Bolger,* 371 U. S. 397, where the only injuries alleged were violations of procedural constitutional rights of defendants in the course of criminal trials rather than a threatened interference with the immediate exercise of First Amendment liberties. It might be argued that these procedural violations could be remedied in the course of the normal appeal, whereas here the injuries to First Amendment liberties caused by proceedings under an unconstitutionally vague statute are immediate and irreparable and without any possible remedy other than direct equitable relief. Thus the injuries flowing from the enforcement of an unduly vague statute are injuries to the immediate exercise of constitutional liberties by the entire class of citizens who may fall within the dragnet sweep.

the responsibilities of federal equity jurisdiction. The decision merely restates the time-honored rules of equity jurisprudence that an injunction will issue only upon a showing of "irreparable injury", 319 U. S. at 164, and that "ordinarily" equity will not restrain criminal prosecutions absent a "showing of danger of irreparable injury", *ibid.* But a prosecution under an unconstitutionally vague state statute which "deters constitutionally protected conduct", *Baggett* v. *Bullitt, supra,* is not an "ordinary" criminal prosecution. And where as a result of the vagueness of the statute, "the free dissemination of ideas may be the loser", *Baggett* v. *Bullitt, supra; Smith* v. *California,* 361 U. S. 147, 151, the injury could not be more serious and irreparable.[51]

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[51] The Fifth Circuit has specifically discussed the impact of the *Jeannette* doctrine upon the restraining of state proceedings under unconstitutional state statutes. See *Denton* v. *City of Carrollton, Georgia,* 235 F. 2d 481 (C. A. 5, 1956). In this case a federal suit was brought for a declaratory judgment and injunctive relief against the enforcement of a city ordinance claimed to be unconstitutional under the Fourteenth Amendment. The District Court declined to exercise jurisdiction or to issue the relief sought relying upon *Douglas* v. *Jeannette.* The Court of Appeals reversed holding:

> "But this wholesome rule [*Douglas* v. *Jeannette*] envisages itself the necessity under circumstances of genuine and irretrievable damage, for affording equitable relief even though the result is to forbid criminal prosecution or other legal proceedings."

See also *City of Houston* v. *Dobbs Co.,* 232 F. 2d 428 (C. A. 5, 1956) affirming the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. And in *Bush* v. *Orleans Parish School Board,* 194 F. Supp. 182 (D. Ct. E. D. La. 1961), Judge Rives, for the three-judge court discussed directly the impact of *Jeannette.* Louisiana had enacted a series of criminal laws designed in their operation, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The Attorney General argued that the rule of *Jeannette* prohibited the federal court from enjoining these criminal

Moreover the equitable concept that "ordinarily" a criminal proceeding will not be enjoined reflects essentially a principle of comity, an historic reluctance of the courts of equity to interfere with the special competence of the courts of law. Where an "ordinary" criminal proceeding is involved, the subject matter of the cause is primarily an application of the criminal laws, traditionally an exclusive concern of the courts of law. In the case of federal-state equity relationships the "ordinary" criminal proceeding in a state court involves, as the Court pointed out in *Jeannette*, primarily the "determination of questions of criminal liability under state law". 319 U. S. at 164. The principles of comity underlying the *Jeannette* rule would thus require that this special competence of the state courts of law be interfered with by the federal courts of equity only upon a "showing of danger of irreparable injury both great and immediate", 319 U. S. at 164. But where the cause becomes exclusively a question of federal law as in the case of an action seeking the enjoining of the enforcement of an unconstitutionally vague statute, any comity considerations underlying federal equity's reluctance to interfere with state criminal law enforcement vanish.[52] And where deterrence to the exercise of funda-

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statutes and proceedings: Judge Rives rejected this assertion stating for the Court:

> "True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' *Douglas* v. *Jeannette*. * * * But this rule cannot be applied mechanically. *NAACP* v. *Bennett* cf. *Doud* v. *Hodge*, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. *Truax* v. *Reich*, 239 U. S. 33; *Pierce* v. *Society*, 238 U. S. 510; *Hague* v. *CIO*, 307 U. S. 496 * * *. This is such a case."

[52] See for example the discussion of *Browder* v. *Gayle, supra*, in *Morrison* v. *Davis, supra*.

"Discussing *Browder* v. *Gayle* a panel of the Fifth Circuit (Chief Judge Hutcheson and Judges Tuttle and Jones) said, in a *per curiam* opinion:

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mental federal rights occurs as a result of such a statute there is no remedy available other than the enjoining of the enforcement of the statute.[53]

In essence the majority below has only one rationale for its refusal to exercise federal equity jurisdiction. The lower court concedes that federal equity power lies where "an injunction is necessary in order to afford adequate protection of constitutional rights", R. 67, but would ignore the existence of the equity side of the federal court wherever the "paramount right of a state to self-preservation is at issue", R. 68.

However, as in *New York Times Company* v. *Sullivan, supra*, this Court is required "by neither precedent nor policy to give any more weight" to the phrase "right of self-preservation" than it has to "other 'mere labels' of

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"'That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. Sec. 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the *Browder* case in which the same contention was advanced. To the extent that this is inconsistent with *Douglas* v. *City of Jeannette, Pa.*, 319 U. S. 157, 63 S. Ct. 887, 87 L. Ed. 1324, we must consider the earlier case modified.' *Morrison* v. *Davis*, 5 Cir. 1958, 252 F. 2d 102, at 103."

See also *United States* v. *Wood, supra*, reiterating the rationale of *Morrison*.

[53] See *Evers* v. *Dyer*, 358 U. S. 202 holding that a federal district court in Tennessee "erred in not proceeding to the merits" of a suit to enjoin enforcement of a Tennessee criminal statute requiring segregated seating on transportation facilities. See also *Crown Kosher Supermarket* v. *Gallagher*, 176 F. Supp. 466 (D. Mass. 1959) and on other grounds, 366 U. S. 617.

state law", *New York Times, supra* at page 269. See also *NAACP* v. *Button*. And as with the concept of "libel", like "insurrection", "contempt", "advocacy of unlawful acts", "breach of the peace", "obscenity", "solicitation of legal business" * * * "and the various other formulae for the repression of expression that have been challenged in this Court", *New York Times* at page 269, the state's right to self-preservation "can claim no talismanic immunity from constitutional limitations", *New York Times* at page 269. Like every other label utilized to justify repression of federal liberties, "it must be measured by standards that satisfy the First Amendment", *New York Times* at page 269.

It would be paradoxical indeed if the mere assertion of the right of a state to "self-preservation" could frustrate the ability of the federal equity power to protect citizens from the impact of a statute which, in the name of "self-preservation", is itself destructive of fundamental freedoms. An unconstitutionally vague state statute has no "talismanic immunity" from the reach of federal equity power, and its enforcement will be enjoined by the federal courts, *Baggett* v. *Bullitt, supra.*

(c) Title 28 U. S. C. 2283 is no bar to the injunctive relief sought.

1. Appellees argued in the court below that Title 28 U. S. C. 2283 is a bar to the injunctive relief sought in the complaint. But as Judge Wisdom has pointed out, the federal plenary action was brought prior to the institution of any state court criminal proceeding.[54] Title 28 U. S. C.

[54] The complaint was filed on November 12, 1963 R. 1. The Grand Jury was convened for November 20, 1963 R. 53. The stay of proceedings was issued by Circuit Judge Wisdom on November 18, 1963. The proceedings against appellant Dombrowski and appellant-intervenors Smith and Waltzer were not commenced by indictment until January 22nd and January 25th, 1964. See Appendix B.

2283 accordingly does not bar equitable relief. *Ex parte Young, supra; Truax* v. *Reich, supra; Looney* v. *Eastern Texas R. R.* 247 U. S. 214; *American Houses* v. *Schneider,* 211 F. 2d 881 (C. A. 3); Hart and Wechsler, *The Federal Courts and the Federal System,* 847; Moore, *Commentary on Judicial Code,* 408; Note, *Enjoining State Court Proceedings,* 74 Harv. L. R. 726, 729 (1961).

It is settled law that 28 U. S. C. 2283 does not bar injunctive relief restraining state court proceedings where the federal action has been instituted prior to the state proceedings. See Moore, *Commentary on Judicial Code, supra.*[55] This reflects the fundamental principles of comity Section 2283 was designed to codify. *Smith* v. *Apple,* 264 U. S. 274. In *Ex parte Young, supra,* this Court in upholding a federal injunction against a threatened state criminal prosecution under a statute challenged as unconstitutional disposed of the contention that a federal court of equity was powerless to enjoin state criminal proceedings which had been commenced after the institution of the federal action challenging the governing statute:

> "It is further objected (and the objection really forms part of the contention that the State cannot be sued) that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment or otherwise under the State law. This, as a general rule is true. But there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject matter of inquiry in a suit already pending in the Federal court, the latter court having first obtained jurisdiction over the subject has the right, in both civil and

[55] "Nor does 2283 prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes or administrative orders which are repugnant to the Constitution of the United States, and after the federal jurisdiction has been invoked from protecting that jurisdiction by enjoining interfering state court proceedings subsequently instituted." Moore, *Commentary on Judicial Code,* p. 408.

criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed * * * " *Ex parte Young, supra*,[56] at pp. 161-162.

Only last Term this Court had the occasion to reaffirm the concept underlying the rule established in *Ex parte Young*. In *Davis* v. *Mann*, 377 U. S. 678, in rejecting a contention that the federal district court should have abstained from decision, the Court pointed out that failure to exercise federal jurisdiction was inappropriate "especially so where, as here, no state proceeding had been instituted or was pending when the District Court's jurisdiction was invoked", *Davis* v. *Mann*, at pp. 690-691.

2. Since the federal plenary action was instituted prior to the state court proceedings, Section 2283 has no applica-

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[56] No state court proceeding of any kind was commenced against appellants prior to the institution of the federal plenary action. It has been held that a state criminal proceeding, for the purposes of Sec. 2283, does not commence until after the prosecutor has laid the indictment before the grand jury. *Fenner* v. *Boykin*, 3 F. 2d 674 (N. D. Ga. 1925), aff'd 271 U. S. 240 (1926).

In that case the District Court, holding that the predecessor of Sec. 2283 did not bar an injunction against a threatened criminal prosecution stated (3 F. 2d 676):

> "Judicial Code, Sec. 265, does not prohibit the inquiry. Neither the grand jury nor the court of which it is a part will ever be enjoined * * *. Nothing will prevent their action save a regard for the harmony of the judiciary. Though the injunction of solicitor and sheriff would be a substantial injunction of the prosecution, it is not prevented by section 265 because of the well-recognized exception whereby the federal court may thus protect the jurisdiction first acquired by it. The investigation entered upon by the grand jury was not a prosecution. When this bill was filed no indictment had been prepared by the Solicitor General and laid before the grand jury. This Court may prevent his making one since the filing of this bill, or prosecuting one since found, until it shall have fully exhausted its jurisdiction in the premises."

tion. *Ex parte Young* and cases cited *supra*. In any event, Title 28 U. S. C. 2283 by its own terms does not apply to injunctions against state proceedings where injunctive relief has been expressly authorized by an Act of Congress. Title 42 U. S. C. 1983 upon which this complaint is grounded, expressly authorizes injunctive relief against state court proceedings. See Circuit Judge Wisdom dissenting below, R. 107. *Cooper* v. *Hutchinson*, 184 F. 2d 119 (C. A. 3, 1958); see also, *United States* v. *Wood*, 295 F. 2d 772 (C. A. 5 1961); *Morrison* v. *Davis*, 257 F. 2d 102 (C. A. 5 1958); *Tribune Review Publishing Co.* v. *Thomas*, 153 F. Supp. 486 (W. D. Pa. 1957). See Moore, 1A Federal Practice, Paragraph 0.213(2) P. 2417.[57]

(d) The Doctrine of Abstention cannot justify the District Court's refusal to adjudicate the Federal issues raised.

The majority of the District Court would cloak its abdication of federal judicial responsibility with the mantle of the doctrine of "abstention". But this Court has faced the necessity recently of firmly rejecting this conceptual technique for evading the duty of the federal district courts to exercise the jurisdiction conferred upon them by the Congress and the Constitution to protect federally created rights. *Baggett* v. *Bullitt, supra; Griffin* v. *County School Board of Prince Edward County*, 377 U. S. 218; *Davis* v. *Mann, supra; McNeese* v. *Board of Education*, 373 U. S. 668.

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[57] But cf. *Baines* v. *Danville*, 4th Cir., decided August 10, 1964, petition for rehearing pending. In *Baines* the Court of Appeals for the Fourth Circuit has recently divided three to two as to whether Title 42 U.S.C. 1983 is an express exception to Section 2283, Circuit Judges Haynsworth, Boreman and Bryan holding that 1983 is not an express exception to 2283 and Chief Judge Sobeloff and Circuit Judge Bell, in dissent holding that 1983 does fall within the "expressly authorized" exception. The Court in *Baines*, however, unanimously reversed the District Court's refusal to entertain a complaint seeking equitable relief against future arrests and prosecutions under an alleged unconstitutional city ordinance and state court injunction.

The decision this June in *Baggett* v. *Bullitt* wholly disposes of any contention that the federal courts should abstain from enjoining the enforcement of this Louisiana statute. In *Baggett* the Court was asked to affirm a decision by a three-judge District Court that federal adjudication of the constitutionality of Washington's 1931 oath statute was not proper prior to proceedings in the state courts which might resolve or avoid the constitutional issue. 215 F. Supp. 439.

This Court refused to apply the doctrine of abstention developed initially in *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496 to the Washington statute for reasons which are dispositive here. As the Court found it necessary to state sharply at the outset of its discussion "the abstention doctrine is not an automatic rule applied whenever a federal court is faced with a doubtful issue of state law". *Baggett*, p. 375. See also *Davis* v. *Mann; Griffin* v. *County School Board; McNeese* v. *Board of Education, all supra.* See also *England* v. *Louisiana State Board*, 375 U. S. 411; *Hostetter* v. *Idlewild Bon Voyage Co.*, 375 U. S. 809. The district courts are not required to defer automatically to the state courts in the adjudication of federal constitutional questions. Rather the discretionary abstention from decision is permissible only where "there exist the 'special circumstances' *Propper* v. *Clark*, 337 U. S. 472 prerequisite to its application [which] must be made on a case to case basis." *Baggett* at p. 375. And as in *Baggett* "Those special circumstances are not present here."

The fundamental reason why the Court found that any concept of abstention was impermissible in *Baggett* applies with equal force here. As the Court said in respect to the Washington statute, "We doubt, in the first place, that a construction of the oath provisions, in light of the vagueness challenge, would avoid or fundamentally alter the constitutional issue raised in this litigation" *Baggett* at 375-376. This is the heart of the

matter. As in *Baggett,* "Here the uncertain issue of state law does not turn upon a choice between one or several alternative meanings of a state statute." For as with the Washington statute struck down in *Baggett,* this Louisiana law "is not open to one or a few interpretations, but to an indefinite number." This is precisely the crux of the constitutional vice of vaguenes and overbreadth which condemns this statute. And as the Court concludes, in *Baggett* accordingly it is "difficult" to see how state court construction of the "challenged terms * * * could eliminate the vagueness from these terms." And as in *Baggett,* here too "it is fictional to believe that anything less than extensive adjudications, under the impact of a variety of factual situations, would bring the [statute] within the bounds of permissible constitutional certainty." As in *Baggett* "abstention does not require this" and fundamental constitutional considerations prohibit a refusal to exercise federal jurisdiction.

The Court finds that abstention from constitutional decision in *Baggett* is fraught with danger. It is "a result quite costly where the vagueness of a state statute may inhibit the exercise of First Amendment freedoms." *Baggett* at 379. Since abstention "operates to require piecemeal adjudication in many courts, *England* v. *Louisiana State Board of Medical Examiner,* 375 U. S. 411, * * * remitting these litigants to the state courts * * * would further protract these proceedings * * * with only the likelihood that the case, perhaps years later" will return to this Court "for a decision on the identical issue herein decided." The consequences of such a delayed procedure is devastating in terms of the protection of the fundamentals of free government, for as the Court concludes, "Meanwhile, where the vagueness of a statute deters constitutionally protected conduct 'the free dissemination of ideas may be the loser.'"

This Court's decision in *Baggett* rejects out-of-hand the "visceral feeling" of the District Judges below that the

constitutionality of the Louisiana statute must be left to adjudication in the state courts. Where a state statute is unconstitutionally vague inhibiting the exercise of First Amendment freedoms and deterring constitutionally protected conduct a Federal District Court may not abstain from adjudication and relief. *Baggett* v. *Bullitt, supra.*

Both the majority and concurring opinions last term in *England* v. *Louisiana State Board, supra,* reinforce the conclusion that the refusal of the court below to assert Federal power was impermissible. As Judge Wisdom caustically points out in his dissenting opinion the doctrine of abstention has been "developing as nicely as if Dr. Frankenstein were in charge of it"—R. 103. The majority opinion below reflects a growing tendency in certain district courts in the Fourth and Fifth Circuits to avoid federal responsibility for the protection of basic civil rights by characterizing loosely any exercise of federal jurisdiction in this area as interference with "states rights."[58] This reluctance to utilize statutory federal power is generally justified by a reference to the doctrine of abstention. See Lusky, *Racial Discrimination and the Federal Law, supra;*[59] and Note 73 Yale 90 (1963), *Judicial Performance in the Fifth Circuit.* The opinions in

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[58] See *Darby* v. *Daniel,* 168 F. Supp. 170, 195 (S. D. Miss. 1958); *Lassiter* v. *Taylor,* 152 F. Supp. 295 (E. D. N. C. 1957); *Bryan* v. *Austin,* 148 F. Supp. 563 (E. D. S. C. 1957), *vacated as moot,* 354 U. S. 933 (1957).

[59] "The abstention doctrine which the district court relied on should likewise be repudiated or sharply limited. Originally devised as a judge-made rule of self-restraint designed to give the state courts primary jurisdiction over difficult problems of interpreting local legislation, it has enjoyed a considerable vogue in Southern race discrimination cases. It has tended to paralyze the federal courts in doing the job they were primarily designed for—enforcement of locally unpopular federal law." Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification,* Col. L. R., Vol. 63, p. 1183 (Nov. 1963).

England provide an incisive antidote to the increasingly widespread misuse of the concept. Mr. Justice Brennan has restated in *England* the threshold principle of law which the majority below wholly ignores in approaching the question of its power and duty to act. This is the fundamental proposition that "Congress, pursuant to constitutional authorization, has conferred specific heads of jurisdiction upon the federal courts." *England* at 415, and that accordingly "when a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction" *England* at 415, restating *Willcox* v. *Consolidated Gas Co.*, 217 U. S. 19.

As Justice Brennan points out the abstention doctrine may not be utilized to undermine this basic assumption of the Federal system. This is because "abstention is a judge-fashioned vehicle for according appropriate deference to the 'respective competence of the state and Federal court systems' *Louisiana P. & L. Co.* v. *Thibodaux*, 360 U. S. 25" *England* at 415. Justice Brennan then analyzes the essential comity considerations which govern the application of the doctrine. "Its recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law" *England* at 415-416. This is, we suggest, the heart of the problem. As we have seen in analyzing the *Jeannette* rule the touchstone here also is the recognition that the challenge to an unconstitutionally vague state statute which trenches upon First Amendment liberties is a fundamental question of federal law falling within the special "competence" of the "federal court systems".[60] It is a question in which the "primacy of the federal judiciary in deciding questions of

[60] It follows *a fortiori* that the issue of preemption is certainly within that special "competence". The District Court found it impossible to refrain from ruling on it in contradiction to its own rationale R. 70-72.

federal law" is properly invoked.[60a] The comity principles underlying the doctrine of abstention require here that the Federal system recognizes its "primacy" and its "competence" and accepts its "duty" to adjudicate. *England* at 415-416.[61]

Both Justice Brennan's opinion for the majority in *England* and Justice Douglas' concurring opinion stress

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[60a] The limitations upon the doctrine of abstention spelled out in footnote 7 to the Court's opinion in *England* are instructive in considering the inappropriateness of applying the concept to the present situation. The Court in *England* points out that "the doctrine contemplates only 'that controversies involving unsettled questions of state law [may] be decided in state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions' *City of Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U. S. 639" and "that decision of the federal question be deferred until the potentially controlling state-law issue is authoritatively put to rest." *United Gas Pipe Line Co.* v. *Ideal Cement Co.*, 369 U. S. 134. Here, as we have discussed, the controversy involves no "unsettled questions of state law, and there is no 'potentially controlling state-law issue' to be authoritatively put to rest." The issue is exclusively a question of federal law and is peculiarly within the "competence of the federal court system." And unlike *Spector Motor Service Inc.* v. *McLaughlin*, 323 U. S. 101, here there is no necessity for deciding "questions of constitutionality on the basis of preliminary guesses regarding local law."

[61] This Court has recently in several other decisions made it emphatically clear that the doctrine of abstention will not be permitted to undermine the primacy of federal jurisdiction in areas of federal competence. In *Griffin* v. *City School Board of Prince Edward County*, 377 U. S. 218, the Court summarily rejected a decision of the Fourth Circuit, Judge Bell dissenting, 322 F. 2d 332, refusing to adjudicate a controversy involving the enforcement of the Equal Protection Clause in a school segregation case. In *Davis* v. *Mann*, 377 U. S. 678, the Court rejected a contention that the lower court should have abstained to permit prior adjudication by the state court in a reapportionment case. The Court found that abstention was particularly inappropriate "especially so where, as here, no state proceeding had been instituted or was pending when the District Court's jurisdiction was invoked" *Davis* at pp. 690-691.

that the *Pullman* doctrine and its progeny deal legitimately only with the area of federal deference to state courts on questions of local law. As Justice Douglas points out, *Pullman* only says, "'The 'last word' as to the meaning of local law 'belongs neither to us nor to the district court but to the Supreme Court of Texas'." But neither *Pullman* nor any of the decisions of this Court applying the doctrine suggest that a "deference" to state courts on matters of local law sanctions a disregard for the mandate of the Supremacy Clause in respect to the "primacy of the federal judiciary in deciding questions of federal law" *England*, at 416.

Underlying the entire majority opinion below is the assumption that what comity really requires is a rule which would place upon the federal district courts a duty to defer consideration of federal issues until the state courts have first passed upon these "questions of federal law". The majority opinion is quite explicit in this respect.

> "If the action taken by this Court on January 10, 1964 is construed as validating the Communist Control Act as to its constitutionality this action is, of the Court's own motion, hereby vacated, the Court here refraining from taking any action in advance of appropriate proceedings in the State Courts at the State Level. All these matters we commit to the hands of the state criminal tribunals who are equally competent to conscientiously apply protected constitutional rights, subject, of course, to proper supervision by the State Appellate-level courts and the United States Supreme Court." R. 72.

This is a total distortion of this Court's opinion in *Pullman*, see *England* v. *Louisiana State Board, supra,* and rests essentially upon the long repudiated theory that this is a confederation of equal sovereignties rather than a Federal Union. Cf. *Cooper* v. *Aaron, supra; Bush* v. *New Orleans Parish School Board, supra; United States* v. *City of Jackson*, 318 F. 2d 1, 5 Cir. 1963.

The rules of comity which govern the relationship of the federal courts to the state courts must reflect the nature of the political system they are designed to operate within. This is a Federal union. It is not a confederation of equal sovereign powers. The doctrines of American federalism which have emerged through struggles and conflict can only be understood in terms of the original repudiation of the political philosophy underlying the Articles of Confederation. Fundamental to the system of government which emerged after 1787 was the recognition that the alliance of independent and separate sovereign states had been replaced by a Federal Union. This new political form represented a bold experiment in government. In order to preserve the values of the independent local self-government entities which the states represented, within the framework of a unified Nation with power to survive and protect the interests of all its citizens, a fundamental allocation of responsibilities had to be made. In this distribution of power the primary responsibility for the protection and preservation of the Union itself and the system of government upon which it rests fell upon the national government. And to implement this responsibility the Supremacy Clause was written.

It is within this context that the role of the district court in this litigation must be examined. The preservation of American federalism, the necessary objective of any rule of comity, requires that this original and fundamental division of responsibility between the national government and the states be respected. The healthy values of a federal system are no more served by a denial of national responsibility than by an intrusion into local responsibility. Upon the national government and the national courts has been placed the primary responsibility for the preservation of those aspects of government essential to the existence of the Federal Union.

Nothing is more basic to the functioning of the system of government upon which the Union itself rests than the

preservation of the fundamental liberties of the people guaranteed in the First, the Fourteenth and the Fifteenth Amendments to the Federal Constitution. As Chief Justice Stone suggested in the now famous *Caroline Products* footnote, essential to the functioning of any of the institutions of American government is the ability of the people to provide the ultimate controls over these institutions through the free processes of political democratic activity. Accordingly, paramount to any other consideration is the pressing necessity for preserving to the people the free access to these fundamental political processes of democracy. These channels of democratic expression enunciated and guaranteed in the First, Fourteenth and Fifteenth Amendments, represent the ultimate form of control over both the federal and state units of government. Without free access to these ultimate controls American federalism cannot work. It is in this sense that no responsibility could be graver than the duty imposed upon the national courts by the original division of responsibility to protect and vindicate the fundamental liberties of American citizens guaranteed in the Constitution. It is a task they may not abstain from. It is an obligation they may not avoid. As the Chief Justice said for the national judiciary last Term, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." *Reynolds* v. *Sims*, *supra*.

Circuit Judge Wisdom's response to the majority renunciation of federal judicial responsibility in this case reflects this fundamental conception of the role and duty of the federal district courts.

> "* * * the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.
>
> "When the wrongful invasion comes from the State, and especially when the unlawful state action

> is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual. This responsibility is not new. It did not start with the *School Segregation Cases*. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable." R. 86, 87

The refusal of a federal court to decide can be as destructive of the fundamental values of American federalism as the now repudiated doctrines of interposition and nullification. It reflects the same rejection of the supremacy of federal law and the primacy of the Federal Union. But in one sense it presents an even more serious challenge to the survival of American federalism than the open defiance of national authority embodied in the frank espousal of nullification. Cf. *Cooper* v. *Aaron, supra.* The supremacy of national law and national policy depends upon the corrective ability of the federal court system to control state encroachment upon or rejection of national law. See Madison, 5 Elliott's Debates (Lipp. ed. 1941) p. 159; *England* v. *Louisiana State Board, supra.* Mr. Justice Douglas concurring at p. 423. If the federal courts fail to provide the corrective remedy which the federal scheme requires, no effective original tribunal will exist in large areas of the country for the protection of fundamental federal rights. This would present a challenge to the survival of a philosophy of free government based upon the rule of law. It is an alternative this Court cannot accept. For as the Court has recently said, "Courts sit to adjudicate controversies involving alleged denials of constitutional rights", *Lucas* v. *44th General Assembly of Colorado,* 377 U. S. 713. The Federal District Court below had, under the Constitution and the laws of the United States, the solemn duty to adjudicate the fundamental federal question presented to it. It could not abstain from that responsibility consistent with its "oath" and "office". *Reynolds* v. *Sims, supra.*

POINT IV

The refusal to permit appellants to adduce any evidence as to the constitutionality of the statutes as applied violated due process of law.

The majority of the three-judge court refused to permit appellants to adduce any evidence whatsoever either in support of their contention that the state statutes were unconstitutional as applied, or in support of the charge, under Title 42 U. S. C. 1983 and 1985, that the appellees were engaged in a conspiracy under color of state law to deprive them of federal constitutional rights.[62]

In order to justify its refusal to permit evidence of unconstitutional application the majority below found that the complaint failed to state a cause of action for relief. But as Judge Wisdom points out in his dissection of the majority rationale, this results in a rather incredible conclusion. A federal district court here holds that there is no cause of action or right to relief in a federal court to protect federally guaranteed rights when citizens are threatened with prosecution under a state "anti-subversive" law not because they are subversive but because they advocate equality for Negro citizens. Judge Wisdom states the questions sharply:

> "Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no way of deciding whether a law is applied

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[62] The District Court originally indicated in the first hearing on December 9th that if it determined that the statute was constitutional on its face it would hold another hearing to receive evidence on the issue of the constitutionality of the statute as applied R. 73. Instead, on January 10th, the court held a hearing on the question as to whether the admission of evidence was required. The appellants made an offer of proof R. 23-29, to which was attached several affidavits R. 30-61.

> unconstitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses. The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that 'the complaint failed to state a claim upon which relief can be granted'. This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes." R. 93-94

If appellant's cause of action, as described above by Judge Wisdom, is not a basis for relief in a federal court then the Civil Rights Acts and the Fourteenth and Fifteenth Amendments are dead letters. For as Judge Wisdom points out:

> "Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for raising the shield of the Constitution in protection of a citizen's constitutional rights."

Appellants sought to introduce oral and written evidence to substantiate their claim for relief under the Civil Rights Acts and the Constitution. Judge Wisdom concisely summarized the offer of proof:[63]

> "As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute

[63] The offer of proof is set forth in the Record at pp. 23-29.

them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify." [64] R. 93.

Perhaps unsure of its ground for refusing to hear this evidence, the majority argued that although "evidence has been frequently admitted to show unconstitutional application of statutes" R. 74, in this case since "the very vitals of our constitutional system of government are on the line" the appellants should not be allowed to introduce evidence which might result in a public hearing with "publicity attendant therewith" R. 74.[65] This extraordinary reasoning evoked the comment from the dissenting Circuit Judge that "this rationale illustrates what I mean by the suggestions, respectfully tendered, that perhaps the decision is the result of a visceral reaction" (R. 95).

Evidence tending to show that a state statute otherwise valid on its face is unconstitutional as applied to given circumstances or individuals is clearly admissible. *United States* v. *Caroline Products Co.*, 304 U. S. 144; *Prentis* v. *Atlantic Coastline Co.*, 211 U. S. 210; *Railroad Retirement Board* v. *Alton R.R.*, 295 U. S. 330; *Weaver* v. *Palmer*, 270 U. S. 402; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543; see *Whitney* v. *California*, 274 U. S. 357, 379.

As Chief Justice Stone pointed out in *Caroline Products*:

"[T]he constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to

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[64] The affidavits of Dr. James A. Drombowski, Benjamin Smith, Bruce Waltzer, Dr. Martin Luther King, Jr., Rev. Fred L. Shuttlesworth, Rev. C. T. Vivian, Bishop Edgar A. Love, and Dr. Herman H. Long were attached to the offer of proof R. 30-61.

[65] The District Court majority would avoid "a Star Chamber proceeding with all the 'folderol' and publicity attendant therewith" R. 74.

> article [or person] is without reason * * *". show that the statute as applied to a particular
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> *United States* v. *Caroline Products, supra.*

And as Mr. Justice Holmes has said,

> "[T]he determination as to [the plaintiffs'] rights turns almost wholly upon the facts to be found * * *. All their constitutional rights, we repeat, depend upon what the facts are found to be * * *. They are not to be forbidden to try those facts before a court of their own choosing, if otherwise competent."
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> *Prentis* v. *Atlantic Coast Line Co., supra.*

Nothing could be more threatening to the "very vitals of our constitutional system of government" R. 74, than the denial to these appellants of their day in court out of fear of the "publicity attendant" to the airing before the community and the nation of the serious charges they have brought against these state officials. Due process of law is not such a slender reed that it bends before the strong winds of public scrutiny. Cf. *New York Times* v. *Sullivan, supra.* The issue raised by the refusal to accept evidence is put quite simply by the dissenting Judge. "I know this, however; the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof" R. 95.[66]

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[66] The failure of the District Court to permit appellants to adduce evidence in support of the cause of action alleged under Title 42 U. S. C. 1983 and 1985 is another reflection of abdication of fundamental responsibility under the federal system. As Judge Wisdom commented:

> "Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State's unyielding policy of segregation at the expense of the individual citizen's federally guaranteed rights and freedoms."

Conclusion

The issues presented in this appeal are far reaching in their impact upon decisive areas in our national life. They are inextricably bound up with the increasingly pressing question of our era—whether a system of democratic legal institutions can function so as to guarantee the peaceful achievement of equality and freedom for all American citizens. It is in this sense that the protection of the exercise of the fundamental freedoms of speech, press, assembly and association by those who seek the constitutional goal of equality for all is the highest responsibility of the federal courts. It is as Judge Wisdom writes a responsibility "close to the heart of the American Federal Union".

* * *

The decision of the District Court should be reversed, the complaint reinstated and the case remanded with instructions to enjoin the enforcement of the Subversive Activities and Communist Control Law (Louisiana Revised Statutes, 14:358 through 14:374) and the Communist Propa-

ganda Control Law (Louisiana Revised Statutes, 14:390 through 14:390.8).

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APPENDIX A

Statutes Involved

LOUISIANA REVISED STATUTES

14:358 through 14:388

Sec. 358. Subversive Activities and Communist Control Law; Declaration of Public Policy

In the interpretation and application of R. S. 14:358 through R. S. 14:374 the public policy of this state is declared to be as follows:

There exists a world communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control is to be brought about by aggression, force and violence, and is to be accomplished in large by infiltrating tactics involving the use of fraud, espionage, sabotage, infiltration, propaganda, terrorism and treachery. Since the state of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the state of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in imminent danger of communist espionage, infiltration and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the state of Louisiana and in the United States of America. The world communist movement constitutes a clear and present danger to the citizens of the state of Louisiana. The public good, and the general welfare of the citizens of this state require the immediate enactment of this measure. Acts 1962, No. 270, Sec. 1.

Appendix A—Statutes Involved

SEC. 359. DEFINITIONS

(1) A "Communist" means a person who is a member of the Communist Party or is proven to be substantially under the discipline and control of the International Communist Conspiracy.

(2) The "Communist Party" means the Communist Party, U. S. A., or any of its direct successors and shall include any other organization which is directed, dominated or controlled by the Soviet Union, by any of its satellite countries or by the government of any other communist country; or any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy.

(3) "Communist Front Organization" shall, for the purpose of this act include any communist action organization, communist front organization, communist infiltrated organization or communist controlled organization and the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization, a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization.

(4) "Organization" means an organization, corporation, company, partnership association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(5) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof by revolution, force, violence or other unlawful means, or any other organization which seeks by unconstitutional or illegal means to overthrow or destroy the government of the state of Louisiana or any political subdivision thereof and to establish in place thereof any form of government not responsible to the people of the state of Louisiana under the Constitution of the state of Louisiana.

(6) "Foreign subversive organization" means any organization, directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(7) "Foreign Government" means the government of any country, nation or group of nations other than the government of the United States of America or one of the states thereof.

(8) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempts to commit, or aid in the commis-

sion of any act intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or any political subdivision thereof by revolution, force, violence or other unlawful means; or who is a member of a subversive organization or a foreign subversive organization. Acts 1962, No. 270, Sec. 1.

Sec. 360. Registration of Communists

A. Each person remaining in this state for as many as five consecutive days after July 30, 1962, who is a communist or is knowingly a member of a communist front organization, shall register with the department of public safety of the state of Louisiana on or before the fifth consecutive day that such person remains in this state; and, so long as he remains in this state, shall register annually with said department between the first and fifteenth day of January.

B. Registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the state of Louisiana, sources of income, place of birth, places of former residence, and features of identification, including fingerprints of the registrant; organizations of which registrant is a member; and any other information requested by the department of public safety which is reasonably relevant to the purpose of R. S. 14:358 through R. S. 14:374.

C. Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the record shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this state, of the United States or of any state or territory of the United States. At the discretion of the department of public

safety, these records may also be open for inspection by the general public or by any member thereof. Acts 1962, No. 270, Sec. 1.

Sec. 361. COMMUNIST PARTY NOT TO APPEAR ON ELECTION BALLOTS

The name of any communist or of any nominee of the communist party shall not be printed upon any ballot used in any primary or general election in the state or in any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 362. PUBLIC OFFICE; DISQUALIFICATION OF COMMUNISTS

No person may hold any non-elective position, job or office for the state of Louisiana, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the state of Louisiana, or of any political subdivision thereof, where the evidence shows such person to be a communist or a knowing member of a communist front organization. Acts 1962, No. 270, Sec. 1.

Sec. 363. ENFORCEMENT

The attorney general of the state of Louisiana, all district and parish attorneys, the department of public safety, and all law enforcement officers of this state shall each be charged with the duty of enforcing the provisions of R. S. 14:358 through R. S. 14:374. Acts 1962, No. 270, Sec. 1.

Sec. 364. ACTS PROHIBITED

It shall be a felony for any person knowingly and wilfully to

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow or destroy, or to

assist in the overthrow or destruction of the constitutional form of government of the state of Louisiana, or any political subdivision thereof, by revolution, force, violence, or other unlawful means, or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the state of Louisiana, or of any political subdivision thereof, or

(3) Conspire with one or more persons to commit any such act;

(4) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(5) Destroy any books, records, or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such; or

(6) To become or to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization; or

(7) Fail to register as required in R. S. 14:360 or to make any registration which contains any material false statement or omission. Acts 1962, No. 270, Sec. 1.

Sec. 365. PENALTIES

Any person convicted of violating any of the provisions of R. S. 14:364 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than ten years, or both. Acts 1962, No. 270, Sec. 1.

Appendix A—Statutes Involved

Sec. 366. Additional Penalties

Any person convicted by a court of competent jurisdiction of violating any of the provisions of R. S. 14:358 through 14:374 in addition to all other penalties therein provided shall from the date of conviction be barred from:

(1) Holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of Louisiana or of any agency thereof or of any parish, municipal corporation or other political subdivision of said state;

(2) Filing or offering for election to any public office in the state of Louisiana; or

(3) Voting in any election in this state. Acts 1962, No. 270, Sec. 1.

Sec. 367. Dissolution of Subversive Organizations; Forfeiture of Charter; Seizure of Books and Records

It shall be unlawful for any subversive organization or foreign subversive organizations to exist or function in the state of Louisiana and any organization which by a court of competent jurisdiction is found to have violated the provisions of this Section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Louisiana a finding by a court of competent jurisdiction that it has violated the provisions of this Section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this Section shall be seized by and for the state of Louisiana, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over

to the department of public safety of Louisiana. Acts 1962, No. 270, Sec. 1.

Sec. 368. JUDGE'S CHARGE TO GRAND JURY.

The judge of any court exercising general criminal jurisdiction, when in his discretion it appears appropriate, or when informed by the attorney general or district attorney that there is information or evidence of violations of the provisions of this act to be considered by the grand jury, shall charge the grand jury to inquire into violations of R. S. 14:358 through 14:374 for the purpose of proper action, and further to inquire generally into the purposes, processes, and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons. Acts 1962, No. 270, Sec. 1.

Sec. 369. INELIGIBILITY OF SUBVERSIVE PERSON FOR PUBLIC OFFICE OR EMPLOYMENT

No subversive person, as defined in R. S. 14:359, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any parish, municipality, or other political subdivision of this state. Acts 1962, No. 270, Sec. 1.

Sec. 370. SCREENING OF PROSPECTIVE PUBLIC OFFICIALS AND EMPLOYEES

Every person and every board, commission, council, department, court or other agency of the state of Louisiana or any political subdivision thereof, who appoints, employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain,

before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he is not a subversive person, and that there are no reasonable grounds to believe such person is a subversive person. In the event reasonable grounds exist, he shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written affidavit containing answers to such inquiries as may be reasonably material. Acts 1962, No. 270, Sec. 1.

Sec. 371: Exceptions to Screening Requirements

The inquiries prescribed in R. S. 14:370, other than the written statement to be executed by an applicant for employment, shall not be required as a pre-requisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule or regulation specify the reason why the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in R. S. 14:359 will not be dangerous to the health or security of the citizens or the security of the government of the state of Louisiana, or any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 372. Sufficiency of Grounds for Discharge from office or Position; Effect of Civil Service Laws

Reasonable grounds to believe that any person is a subversive person, as defined in R. S. 14:359, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any parish, municipality or other political subdivision of this state, or any agency thereof. The appropriate civil service com-

mission or board shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in R.S. 14:359, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of Louisiana or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in R.S. 14:359, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of R.S. 14:358-14:374 shall promptly report to the department of public safety the fact of and the circumstances surrounding such discharge. Acts 1962, No. 270, Sec. 1.

Sec. 373. Candidates for Public Office; Filing of Non-Subversive Affidavits

No persons shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the constitution or laws of this state unless such candidate or certification by the political party shall have attached to the qualifying papers, the nominating petition or nominating papers filed with the appropriate party committee of this state or the Secretary of State, whichever the case may be, a sworn affidavit that the candidate is not and never has been a subversive person as defined in R.S. 14:359. No qualification of candidates, nominating petition or nominating papers for such office shall be received for filing by the official aforesaid unless the same are accompanied by the affidavit, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or re-

fused to make the required affidavit. Acts 1962, No. 270, Sec. 1.

Sec. 374. CITATION OF SUBVERSIVE ACTIVITIES AND COMMUNIST CONTROL LAW

R.S. 14:358 through R.S. 14:374 may be cited as the Subversive Activities and Communist Control Law. Acts 1962, No. 270, Sec. 1.

Secs. 14:375, 14:376. DELETED

Secs. 14:377-14:380. REPEALED. ACTS 1962, No. 270, SEC. 1

Sec. 385. ORGANIZATIONS ENGAGED IN SOCIAL, EDUCATIONAL OR POLITICAL ACTIVITIES; COMMUNIST AFFILIATIONS PROHIBITED

Non-trading corporations, partnerships and associations of persons operating in the state of Louisiana and engaged in social, educational or political activities are prohibited from being affiliated with any foreign or out of state non-trading corporations, partnerships or associations of persons, any of the officers or members of the board of directors of which are members of Communist, Communist-front or subversive organizations, as cited by the House of Congress un-American Activities Committee, or the United States Attorney. Reports or information from the files of the Committee on un-American Activities of the U. S. House of Representatives shall constitute prima facie evidence of such membership in said organizations. Acts 1958, No. 260, Sec. 1.

Sec. 386. AFFIDAVITS

As a condition precedent to being authorized to operate or conduct any activities in the state of Louisiana, every non-trading corporation, partnership or association of per-

sons engaged in social, educational or political activities, affiliated with any similar non-trading corporation, partnership or association of persons, chartered, created or operating under the laws of any other state, shall file with the secretary of state yearly, on or before December 31, an affidavit attesting to the fact that none of the officers of such out of state or foreign corporation, partnership or association of persons with which it is affiliated, is a member of any such organization cited by the House of Congress un-American Activities Committee, or the United States Attorney General, as Communist, Communist-front or subversive. Acts 1958, No. 260, Sec. 2.

Sec. 387. Failure to File Affidavit; Penalty

Failure to file the affidavit required by R.S. 14:386 shall constitute a misdemeanor, and the officers and members of such non-trading corporation, partnership or association of persons operating in this state and affiliated with such out of state or foreign organizations, failing to file such affidavit, shall be deemed guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall be fined $100.00 and imprisoned 30 days in the parish jail. Acts 1958, No. 260, Sec. 3.

Sec. 388. False Statements in Affidavit as Perjury

Any false statement under oath contained in the affidavit required by R.S. 14:386 filed with the secretary of state shall constitute perjury and shall be punished as provided by R.S. 14:123. Acts 1958, No. 260, Sec. 4.

Appendix A—Statutes Involved

Louisiana Revised Statutes 14:390 through 14:390.5

Sec. 390. Declaration of Public Policy

In the interpretation and application of R.S. 14:390 and the Sub-sections thereof, and as a result of certain evidence having been presented to the Joint Legislative Committee on Un-American Activities of this Legislature, the public policy of this state is declared to be as follows:

There exists a clear, present and distinct danger to the security of the state of Louisiana and the well-being and security of the citizens of Louisiana arising from the infiltration of a significant amount of communist propaganda into the state. In addition, this state is a stopping place or "way station" for sizeable shipments of dangerous communist propaganda to the rest of the United States and to many foreign countries.

The danger of communist propaganda lies not in its being "different" in the philosophy it expresses from the philosophy generally held in this state and nation, but instead in the fact that it is a specific tool or weapon used by the communists for the express purpose of bringing about the forcible total destruction or subjugation of this state and nation and the total eradication of the philosophy of freedom upon which this state and nation were founded. "Words are bullets" and the communists know it and use them so. Whatever guarantees of sovereignty and freedom are enjoyed by this state and its citizens are certain to vanish if the United States of America is destroyed or taken over by propaganda infiltration or otherwise against the United States is and should rightly be considered an attack upon or clear and present danger to the state of Louisiana and its citizens. Such attacks should therefore be the subject of concurrent jurisdiction through remedial legislation such as is now in effect on both the state and

federal level concerning such dangers as the narcotics traffic, bank robbery, kidnapping, etc. We hereby declare that the danger of communist propaganda infiltration is even greater than the danger from narcotics, pornographic literature, switch blade knives, burglar tools or illicit alcohol in dry jurisdictions, all of which have been the subject of valid statutory regulation by the States within the constitutional framework. The federal legislation on this subject matter is either inadequate in its scope, or not being effectively enforced, as much communistic propaganda material unlabeled and unidentified as such, is in fact entering the state of Louisiana at this time.

We further declare that communist propaganda, properly identified in terms similar to those used in the Foreign Agents Registration Act of the United States, is hereby identified as illicit dangerous contraband material. We further declare that certain exemptions hereinafter provided are for the purpose of allowing bona fide students of foreign languages, foreign affairs or foreign political systems, other interested individuals, and also bona fide educational institutions, to obtain this contraband upon specifically requesting its delivery for the purpose of person or institutional use in the due course of the educational process. We do not believe that the possession or use of such material by knowing and informed individuals for their personal use is any significant danger, and in fact it might be of some benefit in informing such individuals of the cynical and insidious nature of the communist party line. In view of these facts and so that any user of such materials will be adequately forewarned, we declare that all such material in any way entering the state of Louisiana should be required to be clearly labeled as communist propaganda as hereinafter provided. Added Acts 1962, No. 245, Sec. 1.

Appendix A—Statutes Involved

Sec. 390.1 DEFINITION OF COMMUNIST PROPAGANDA

(1) "Communist propaganda" means any oral, visual, graphic, written, pictorial or other communication which is issued, prepared, printed, procured, distributed or disseminated by the Soviet Union, any of its satellite countries, or by the government of any other communist country or any agent of the Soviet Union, its satellite countries or any other communist country, wherever located, or by any communist organization, communist action organization, communist front organization, communist infiltrated organization, or communist controlled organization or by any agent of any such organization, which communication or material from any of the above listed sources is

(a) reasonably adopted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any way influence a recipient or any section of the public with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party, or promote in the United States or the state of Louisiana, any attitude or state of mind that tends to undermine the determination of any citizen of the United States or of any of the various states to uphold and defend the Constitution of the United States or the constitutions of the respective states, or tends to create or encourage disrespect for duly constituted legal authority, either federal or state, or

(b) which advocates, advises, instigates or promotes any racial, social, political or religious disorder, civil riot, or other conflict involving the use of force or violence in the United States, the state of Louisiana or any other American republic, or the overthrow of any government or political subdivision of the United States, the state of

Louisiana or any other American republic by any means involving the use of force or violence.

(2) For the purposes of R.S. 14:390-14:390.8, the fact that an organization has been officially cited or identified by the attorney general of the United States, the subversive activities control board of the United States or any committee of the United States Congress as a communist organization, a communist action organization, a communist front organization or a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization. Added Acts 1962, No. 245 Sec. 1.

Sec. 390.2 Acts Prohibited

It shall be a felony for any person to knowingly, willfully and intentionally deliver, distribute, disseminate or store communist propaganda in the state of Louisiana except under the specific exemptions hereinafter provided. Added Acts 1962, No. 345, Sec. 1.

Sec. 390.3 Legitimate Procurement of Contraband

Bona fide students of foreign languages, foreign affairs, or foreign political systems, other interested individuals, and also bona fide officially accredited educational institutions may obtain communist propaganda and have the same legally delivered to them within the state of Louisiana upon specifically requesting the delivery of the same for the purpose of personal or institutional use in due course of the educational process. All such communist propaganda legally entering this state under this exemption shall be clearly and legibly labeled on both the front and back cover thereof, or on the front if not covered, with the words

"Communist Propaganda" printed or stamped conspicuously in red ink, and failure to so label said material shall constitute a violation of R.S. 14:390-14:390.8 on the part of the sender or distributor thereof, the violation to be considered to take place at the point of actual delivery to the ultimate user who requested the material. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.4 Venue

Violations of R.S. 14:390-14:390.8 are considered to take place at the location where the prohibited contraband material is found, either stored in bulk or placed in the hands of the ultimate user. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.5 Warehousing and Storage

It is the duty of the sheriffs of the respective parishes, upon the finding of any bulk storage of any communist propaganda, to enter upon the premises where the material is found, clear the premises of all human occupants, and padlock the premises until judicially ordered to reopen them. The owner of any padlocked premises may, upon application to the district court of proper jurisdiction and upon showing the court that the premises can be immediately cleared of the prohibited contraband material, obtain an order from the court to the sheriff, authorizing him to supervise the removal of the contraband by the owner of the premises and to re-open the premises thereafter. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.6 Destruction of Contraband

All communist propaganda discovered in the state of Louisiana in violation of R.S. 14:390-14:390.8 shall be seized and after proper identification and upon summary

order of the district court of proper jurisdiction, destroyed, unless needed for official purposes. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.7 Penalties

Any person who violates any of the provisions of R. S. 14:390-14:390.6 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than six years, or both. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.8 Short Title

R.S. 14:390 through 14:390.7 may be cited as the "Communist Propaganda Control Law." Added Acts 1962, No. 245, Sec. 1.

APPENDIX B

Indictments Returned Against Appellants Dombrowski, Smith and Waltzer

Indictment of Benjamin E. Smith

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } SS.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950 and on April 23, 1956, and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.

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SECOND COUNT

AND NOW THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT THAT one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Treasurer of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

THIRD COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of said State, upon their oath, PRESENT That one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and with the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said

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Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947, while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained in this State, all as required by Louisiana Revised Statutes, Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

.....,
District Attorney for the
Parish of Orleans.

Indictment of James A. Dombrowski

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } SS.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four

with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Executive Director of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

SECOND COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947; while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 25th day January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a mem-

ber of a Communist front organization on or before the fifth day that he remained in this State, all as required by Louisiana Revised Statutes Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

....., District Attorney for the Parish of Orleans.

Indictment of Bruce Waltzer

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } SS.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one BRUCE WALTZER late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950 and on April 23, 1956,

and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.